4-561

April 14 1877

Perkins

Hamilton

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 234.

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THE ÆTNA LIFE-INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

DAVID FRANCE AND LUCETTA T., HIS WIFE, IN RIGHT OF SAID LUCETTA T., AND TO HER USE.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Ass

**FILED NOVEMBER 14, 1874.**

April 25 1877

Abbott

Bradley

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1 In the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit.

DAVID FRANCE AND LUCETTA T. FRANCE, his wife, in right of the said Lucetta and to her use,
*vs.*
THE ÆTNA LIFE-INSURANCE COMPANY OF Hartford, Connecticut.
} Of October session, 1872. No. 7.

UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October session, 1872, No. 7.

It is thus contained:

Be it remembered that on the fourth day of November, in the year of our Lord one thousand eight hundred and seventy-two, the Ætna Life-Insurance Company, of Hartford, Connecticut, by Samuel C. Perkins, esquire, their attorney, come into our said court here and file of record a copy of the process and proceedings of the district court for the city and county of Philadelphia, which being read, is as follows, to wit:

2 [SEAL.] STATE OF PENNSYLVANIA,
*City and County of Philadelphia, ss:*

In the district court for the city and county of Philadelphia, it is contained of record as follows, to wit:

Sharpless.

DAVID FRANCE AND LUCETTA F. FRANCE, his wife, in right of the said Lucetta and to her use,
*vs.*
THE ÆTNA LIFE-INSURANCE COMPANY OF Hartford, Connecticut.
} Of September term, 1872. No. 1379.

S. C. Perkins. Oct. 12, '72.
Sums. Case. Exit Oct. 4, 1872. Ret. 1st Mon. Oct., 1872, "Served."

Oct. 12, 1872. Rule to remove suit to circuit court of U. S. Proceedings to stay. Eo die. Petition of defendants filed.
Oct. 19, 1872. Rule absolute.

3 CITY AND COUNTY OF PHILADELPHIA, *ss:*

The Commonwealth of Pennsylvania to the sheriff of Philadelphia County, greeting:

We command you that you summon the Ætna Life-Insurance Company of Hartford, Connecticut, late of your county, so that it be and appear before our judges at Philadelphia, at our district court for the city and county of Philadelphia, to be holden at Philadelphia, in and for the said city and county of Philadelphia, the first Monday of October inst., next, there to answer David France and Lucetta F. France, his wife, in right of said Lucetta and to her use, of a plea of trespass on the case, etc. And have you then and there this writ.

Witness the honorable J. I. Clark Hare, doctor of laws, president of our said court at Philadelphia, the 4th day of October, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] J. C. ADDIS, JR.,
*Prothonotary.*

4 (Indorsed:) 1379. Sept., 1872. David France et ux, &c., vs. The Ætna Life-Insurance Company of Hartford, Connecticut, Ch. H. Brush, agent & manager, No. 121 So. 4th st. Summons. Case. Sharpless.

Served the Ætna Life-Insurance Company, of Hartford, Connecticut, by giving a true and attested copy of the within writ to C. H. Brush, agt. of said company, and making known to him the contents thereof, October 5th, 1872.

So answers—

JAMES V. STOKES,
*Dep'y Sheriff,*
WM. R. LEEDS,
*Sheriff.*

5 DAVID FRANCE AND LUCETTA F. F. France, his wife, in right of the said Lucetta and to her use, *vs.* THE ÆTNA LIFE-INSURANCE COMPANY OF Hartford, Connecticut. } D. C. September term, 1872. No. 1379.

To the honorable the judges of the district court for the city and county of Philadelphia:

The petition of the Ætna Life-Insurance Company of Hartford, Connecticut, respectfully sheweth:

That the above action was commenced against petitioners in this court by summons issued October 4, 1872, returnable to me the first Monday of October instant, and served upon the agent of the petitioners at his office in this city.

That petitioners are, and were at the time of the issuing of the summons in the above case, a corporation created by the laws of the State of Connecticut, and, as such corporation, a citizen of said State of Connecticut, and have their principal place of business in the city of Hartford, and State of Connecticut aforesaid; that the said David France and Lucetta F. France, his wife, the plaintiffs in the above action, are, and were at the time of the issuing of the writ in said action, citizens of the State of Pennsylvania; that the matter in controversy in
6 said action exceeds the sum or amount of five hundred dollars, ($500,) exclusive of costs; said action is brought upon a policy of insurance, not under seal, on the life of Andrew W. Chew, for the sum of ten thousand dollars, ($10,000.)

That petitioners are desirous of removing the said cause unto the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, and offer security to this honorable court for the entering in the said circuit court of the United States for the eastern district of Pennsylvania, on the first day of the next session thereof, copies of said process against them, and also for their appearance therein, according to the provisions of the act of Congress in such case made and provided.

Your petitioners further pray this honorable court to accept the said security and to remove the said cause for trial unto the next circuit court of the United States to be held in and for the eastern district of Pennsylvania.

THOS. O. ENDERS,
*President.*

STATE OF CONNECTICUT,
*Hartford City, ss:*

J. L. English, being duly sworn according to law, says that he is secretary of the said Ætna Life-Insurance Company, of Hartford,
7 Connecticut, the defendant above named in the above-entitled action, and that the facts set forth in the foregoing petition are true to the best of his knowledge and belief, and that the matter in controversy in the above-entitled cause exceeds in value five hundred (500) dollars, exclusive of costs.

J. L. ENGLISH.

Sworn to and subscribed this fourth day of October, A. D. 1872, before me.

[SEAL OF COM'R.] EDWARD GOODMAN,
*Com'r of Deeds for the State of Pennsylvania, Hartford, Conn.*

Know all men by these presents that we, the Ætna Life-Insurance Company, a body politic and corporate in the law created by the laws of the State of Connecticut, and having its principal place of business in the city of Hartford, State of Connecticut, aforesaid, and C. H. Brush, of the city of Philadelphia, State of Pennsylvania, agent, are held and firmly bound unto David France, of Pennsylvania, in the sum of five hundred ($500) dollars, lawful money of the United States of America, to be paid to the said David France, his executors, administrators, or assigns, to and for the only proper use, benefit, and
8 behoof of Lucetta F. France, his wife, her executors, administrators, or assigns, to which payment well and truly to be made, we do bind ourselves, our successors and administrators, jointly and severally, firmly by these presents, sealed with the corporate seal of the said Ætna Life-Insurance Company affixed by their president, and attested by their secretary and sealed with the seal of the said C. H. Brush, dated the tenth day of October, A. D. 1872.

Whereas on the fourth day of October, 1872, a certain writ or process called a summons case was issued out of the district court for the city and county of Philadelphia to September term, 1872, No. 1379, at the suit of David France and Lucetta F. France, his wife, in right of the said Lucetta, and to her use against the said the Ætna Life-Insurance Company;

And whereas the said Ætna Life-Insurance Company, the defendant in said action mentioned, has petitioned the said district court to remove the said cause into the circuit court of the United States in and *in and* for the eastern district of Pennsylvania, in the third circuit, according to the provisions of the act of Congress in such case made and provided: Now, the condition of this obligation is such that if the said circuit court of the United States for the eastern district of Pennsylvania, on the first Monday of April, A. D. 1873, copies of the said process against them hereinbefore mentioned, and shall appear
9 to said action in the said circuit court according to the provisions of the act of Congress in such case made and provided, then this

obligation shall be void; or else shall be and remain in full force and virtue.

THOS. O. ENDERS, *President.*

Attest:
[SEAL ÆTNA L. I. CO.] J. L. ENGLISH,
*Secretary.*
C. H. BUSCH. [SEAL.]

Sealed and delivered in the presence of—
EDWARD GOODMAN.
HENRY D. DIDIER.

To signature of C. H. Busch—
HARRY SNYDER.

STATE OF CONNECTICUT,
*City of Hartford, ss;*

Be it remembered that on this fourth day of October, A. D. 1872, before me, the undersigned, a commissioner resident in said city and State, duly commissioned and qualified by the executive authority and under the laws of the State of Pennsylvania, to take acknowledgements and proof of deeds and other writings to be used or recorded therein, came J. L. English, who is known to me to be the same person whose name is signed to the foregoing instrument of writing in attestation of the corporate seal affixed thereto, and who, being duly sworn, did depose and say that he was present and did see Thomas O. Enders, president of the Ætna Life-Insurance Company, sign the within and foregoing instrument of writing, and affix thereto the common and
10 corporate seal of the said Ætna Life-Insurance Company, which is the same seal now thereto affixed; and that the said instrument of writing was executed and delivered by the said Thomas O. Enders, as president of said corporation, and that the signatures of the said Thomas O. Enders, as president, and of this deponent, as secretary of said corporation, thereto affixed, are of the own proper handwriting of the said Thomas O. Enders and this deponent respectively.

J. L. ENGLISH.

Sworn to and subscribed this fourth day of October, A. D. 1872, before me.

{SEAL OF COMMR. GOODMAN.} EDWARD GOODMAN,
*Commr. of Deeds for the State of Pennsylvania.*

DAVID FRANCE AND LUCETTA F. FRANCE, HIS wife, in right of the said Lucetta, and to her use,
*vs.*
THE ÆTNA LIFE-INSURANCE COMPANY, OF Hartford, Connecticut.
} D. C., Sept. 1872. No. 1379.

And now, to wit, October 12, 1872, Samuel C. Perkins presents an order for his appearance as attorney for defendant, together with the petition, affidavit, and bond of the defendant, for the removal
11 of the above case to the circuit court of the United States for the eastern district of Pennsylvania; and it is ordered that the same be filed, and notice given to the plaintiff's attorney that the same will be heard on Saturday next, the 19th inst.; all proceedings to stay in the mean time.

(Endorsed:) 1379, Sept., 1872. France vs. Ætna Life-Ins. Co., D. C. Petition, affidavit, & bond for removal of case to United States C. C., & order of court. Filed Oct. 12, 1872.

I certify the within and foregoing to be a true and correct copy of the whole record of the case therein stated, as the same remains in the office of the prothonotary of the said district court for the city and county of Philadelphia.

In witness whereof I have hereunto set my hand and affixed the seal of the said district court this 30th day of October, A. D. 1872.

[SEAL D. C. PHILA.] W. H. BENCKERT,
*Pro Proth'y.*

12 And afterwards, to wit, on the twenty-first day of February, in the year of our Lord one thousand eight hundred and seventy-three, the said plaintiffs, David France and Lucetta T. France, his wife, suing in right of the said Lucetta and to her use, by Nathan H. Sharpless, esq., their attorney, come into our said court here and file their declaration, which, being read, is as follows, to wit:

EASTERN DISTRICT OF PENNSYLVANIA,
*City and County of Philadelphia, ss:*

The Ætna Life-Insurance Company of Hartford, Connecticut, a body corporate in the law, chartered by and under the laws of the State of Connecticut and having its principal place of business in said State of Connecticut, was summoned into the district court for the city and county of Philadelphia at the district aforesaid, to answer David
13 France and Lucetta T. France, his wife, suing in right of the said Lucetta, and use of a plea of trespass on the case upon promises; whereupon the said company, defendant, duly removed the said suit into this court under the provisions of the act of Congress in such case made and provided.

And thereupon the said plaintiffs, by Nathan H. Sharpless, their attorney, complain, for that whereas the said plaintiff, Lucetta, heretofore, to wit, on the thirteenth day of September, A. D. eighteen hundred and sixty-five, at the city and county aforesaid, caused to be made a certain policy of insurance subscribed by the president and secretary of the said company defendant, and thereafter, to wit, on the eighteenth day of the month and year aforesaid, at H. aforesaid, countersigned by C. H. Brush, the agent of the defendant at Philadelphia, and delivered to the said plaintiff Lucetta, to wit, at H. aforesaid, which said policy of insurance the said plaintiffs now show to the court here, and which is in the words and figures following, viz:

Policy

"*Participating policy.*

"ÆTNA LIFE-INSURANCE COMPANY, HARTFORD CONNECTICUT.

14 "This policy of insurance witnesseth that the Ætna Life-Insur-
No. 12796. ance Company in consideration of the sum of two hun-
Annual premium, $243.50. dred forty-three dollars and fifty cents, to them in hand paid by Andrew J. Chew, for the benefit of Lucetta T. France, his sister, and of the annual premium of two hundred forty-three dollars and fifty
Note for one-half each year. cents, to be paid to said company on or before the thir-
teenth day of September in every year during the continuance of this policy, do assure the life of Andrew J. Chew, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, in the amount of ten
Term—life. thousand dollars for the term of his life. And the said company do hereby promise and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay or cause

to be paid, the said sum insured to the said assured, her executors, administrators, or assigns, within ninety days after due notice and proof of the death of the said Andrew J. Chew, and in either case all indebtedness of the party to the company shall be deducted from the sum in-
Sum insured, $10,000. sured. If any notes given by the said Andrew J. Chew for any portion of the cash part of premium on the within policy for any current year shall mature and not be paid the policy shall
15 become void from that date, and all payments of premium thereon forfeited to said company.

"All premiums received on this policy (less commissions paid agent) are to be returned, if said Chew volunteers or is drafted into the service of the Army of the United States, during the present war, and dies in consequence thereof. If disabled, the company shall revive the policy or return as above. If in good health when through service the policy shall be revived upon the payment of premiums in arrear, with interest, without extra charge.

"Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Andrew J. Chew shall die upon the seas, or shall, without the consent of this company previously obtained and indorsed upon this policy, pass beyond the settled limits of the United States, (excepting into the settled limits of the British Provinces of the two Canadas, Nova Scotia, or New Brunswick,) or shall, without such previous consent thus indorsed, visit those parts of the United States which lie south of the thirty-sixth degree of north latitude, between the first of June and the first of November, or shall, without such previous consent thus indorsed, pass to or
16 west of the Rocky Mountains, or shall, without such previous consent thus indorsed, enter into any military or naval service whatsoever, (the militia not in actual service excepted,) or shall, without such previous consent thus indorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as conductor or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder, or in case he shall become so far intemperate as to impair his health seriously and permanently, or induce delirium tremens, or shall die by his own hand, or in a duel, or in consequence thereof, or by the hands of justice, or in the known violation of any law of the States, or of the United States, or of any government where he may be, this policy shall be void, null, and of no effect.

"And it is also understood and agreed to be the true intent and meaning hereof, that if the proposal, answers, and declaration made by the said Andrew J. Chew, and bearing date the thirteenth day of September, 1865, and which are hereby made part and parcel of this policy, as fully as if herein recited, and upon the faith of which this agree-
17 ment is made, shall be found in any respect false or fraudulent, then and in such case this policy shall be null and void, or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then, and in every such case, the said company shall not be liable to the payment of the sum insured, or any part thereof; and this policy shall cease and determine. And it is further agreed, that in every case where this policy shall cease, or be or become void, all payments made thereon shall be forfeited to the said company, and also all profits and dividend credits accruing therefrom.

"In witness whereof, the said Ætna Life-Insurance Company have,

by their president and secretary, signed and executed this contract, in the city of Hartford, this thirteenth day of September, 1865; but the same shall not be valid until countersigned by C. H. Brush, agent, at Philadelphia.

("Signed) E. G. BULKELLY,
"*President.*

("Signed) T. C. ENDERS,
"*Secretary.*

"Countersigned at Philadelphia, this eighteenth day of September, 1865.

("Signed) C. H. BRUSH, *Agent.*"

[U. S. int. rev. stamp $1, cancelled.]

And the said plaintiffs aver that the aforesaid policy of insur-
18 ance was made by the said company defendant, and delivered to the said plaintiff Lucetta, as aforesaid, in consideration of the payment to the said company defendant, by the said Andrew J. Chew therefor, of the sum of two hundred and forty-three dollars and fifty cents to them in hand paid by the said Andrew J. Chew, at or before the time of the making of the said policy of insurance, and also in consideration of the annual premium of two hundred and forty-three dollars and fifty cents, to be paid to the said company defendant, by the said Andrew J. Chew, on or before the thirteenth day of September in every year during the continuance of said policy, in accordance with the rules and regulations of the said company defendant in that behalf.

And the said plaintiffs further aver that the said Andrew J. Chew did, during the continuance of said policy, and until the time of his death, as hereinafter mentioned, in accordance with the said rules and regulations of the said company defendant in that behalf, pay to the said company defendant, on or before the thirteenth day of September in every year, the annual premium of two hundred and forty-three dollars and fifty cents aforesaid, as for and on account of the said annual premium mentioned in the policy of insurance aforesaid.

And the said plaintiffs further aver that at the time of the
19 making of the said policy of insurance, and during the continuance thereof, and also at the time of the death of the said Andrew J. Chew, she, the said plaintiff Lucetta, was interested in the life of the said Andrew J. Chew, to a large amount, to wit, to the amount of all the monies insured to her as aforesaid upon the life of the said Andrew J. Chew, to wit, the said sum of ten thousand dollars.

And the said plaintiffs further aver that, afterwards, to wit, on the twenty-fifth day of May, A. D. eighteen hundred and seventy-two, at the city of Philadelphia, to wit, at H., aforesaid, the said Andrew J. Chew died, and that afterwards, to wit, on the tenth day of June, in the year last aforesaid, due notice and proof of the death of the said Andrew J. Chew was given and made to the said company defendant, to wit, at H., aforesaid.

And the said plaintiffs further aver that the said Andrew J. Chew did not die upon the seas, nor did he, after the making of the said policy of insurance, pass beyond the settled limits of the United States, nor did he visit those parts of the United States which lie south of the thirty-sixth degree of north latitude between the first of June and the first of November, nor did he pass to or west of the Rocky Mountains, nor did he
20 enter into any military or naval service whatsoever, nor was he personally employed as an engineer or fireman in charge of a

steam-engine, or as conductor or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder; nor did he become so far intemperate as to impair his health seriously and permanently, or so as to induce delirium tremens; nor did he die by his own hand, or in *or in* consequence of a duel, or by the hands of justice, or in the known violation of any law of any government, county, or place.

And the said plaintiffs further aver that the proposal, answers, and declaration made by the said Andrew J. Chew, bearing date the thirteenth day of September, 1865, and by the terms thereof made part and parcel of the aforesaid policy of insurance, were not in any respect false or fraudulent, to wit, at H. aforesaid; which said proposal, answers, and declaration the said plaintiffs are not able herein to set forth, for the reason that the same are in the possession of the company defendant; of all which said several premises the said company defendant afterwards, to wit, on the tenth day of June, A. D. eighteen hun-
21 dred and seventy-two, at H. aforesaid, had notice.

And the said plaintiffs further aver that although the period of ninety days after due notice and proof of the death of the said Andrew J. Chew had been given and made to the said company defendant, had before the commencement of this suit long elapsed, and although the said Andrew J. Chew was not at the time of his death, and the said plaintiff Lucetta is not, indebted to the said company defendant, yet the said company defendant, although often requested so to do, have hitherto wholly neglected and refused, and still neglect and refuse to pay to the said plaintiff Lucetta the said sum of ten thousand dollars in the said policy of insurance specified, or any part thereof, to wit, at H. aforesaid; and whereas also the said company defendant afterwards, to wit, on the thirteenth day of September, A. D. eighteen hundred and sixty-five, at H. aforesaid, in consideration of the sum of two hundred and forty-three dollars and fifty cents paid in hand to them by the said Andrew J. Chew, at the time of their then and there making the policy of insurance hereinafter mentioned, and also for and in consideration of the promise of the said Andrew J. Chew then and there made to
22 the company defendant to pay them therefor an annual premium of two hundred and forty-three dollars and fifty cents on or before the thirteenth day of September in every year during the continuance of the said policy, that is to say, during the life-time of the said Andrew J. Chew, made and executed a certain other policy of insurance, which said last-mentioned policy afterwards, to wit, on the eighteenth day of September, in the year last aforesaid, (1865,) at H. aforesaid, was countersigned by one C. H. Brush, the agent at Philadelphia of the said company defendant, and lawfully delivered to the plaintiff Lucetta, which last-mentioned policy of insurance is in the like identical words and figures as that set forth in the first count of this declaration, beginning with the words "participating policy," and ending with the words "countersigned at Philadelphia this eighteenth day of September, 1865." (Signed) C. H. Brush, agent.

And the said plaintiffs aver that the said Andrew J. Chew did afterwards, during the continuance of the said last-mentioned policy of insurance, that is to say, during the life-time of the said Andrew J. Chew, duly pay to the said company defendant, on or before the thirteenth
23 day of September in every year, the annual premium of two hundred and forty-three dollars and fifty cents in the said last-mentioned policy of insurance mentioned. The said plaintiffs further aver that afterwards, to wit, on the twenty-fifth day of May, eighteen hun-

dred and seventy-two, at the city of Philadelphia, to wit, at H. aforesaid, the said Andrew J. Chew died, and that afterwards, to wit, on the tenth day of June, in the year last aforesaid, due notice and proof of the death of the said Andrew J. Chew was given and made to the said company defendant; and the said plaintiffs further aver that the said Andrew J. Chew did not in his life-time violate any of the conditions or stipulation' of the said last-mentioned policy of insurance, nor did he die in any of the ways in which it was provided in the said policy that the same should thereupon become void and of no effect. And the said plaintiffs further say that although the period of ninety days after due notice and proof of the death of the said Andrew J. Chew had been given and made to the company defendant, as aforesaid, had, before the commencement of this suit, long elapsed, yet the said company defendant (although often requested so to do) have hitherto wholly neg-
24 lected and refused, and do still neglect and refuse, to pay to the said plaintiff, Lucetta, the said sum of ten thousand dollars, in the said last-mentioned policy specified, or any part thereof, to wit, at H. aforesaid.

And whereas also the said company defendant afterwards, to wit, on the first day of October, A. D. eighteen hundred and seventy-two, at H. aforesaid, was indebted to the said plaintiff, Lucetta, in a certain other large sum of money, to wit, the sum of ten thousand dollars, for so much money then and there found to be due and owing from the said company defendant to the said plaintiff, Lucetta, upon an account then and there stated between them; and being so indebted, the said company defendant, in consideration thereof, then and there promised the said plaintiff, Lucetta, to pay her the said last-mentioned sum of money on request.

And whereas also the said company defendant afterwards, to wit, on the day and year last aforesaid, at H. aforesaid, was indebted to the said plaintiff, Lucetta, in a certain other large sum of money, to wit, the sum of ten thousand dollars, for so much money before that time had and received by the said company defendant, to and for the
25 use of the said plaintiff, Lucetta; and being so indebted, the said company defendant, in consideration thereof, then and there promised the said plaintiff, Lucetta, to pay her the said last-mentioned sum of money, on request.

And whereas also the said company defendant afterwards, to wit, on the day and year last aforesaid, at H. aforesaid, were indebted to the said plaintiff, Lucetta, in a certain other large sum of money, to wit, the sum of ten thousand dollars, for the forbearance of divers large sums of money before that time due and owing from the said company
26 defendant to the said plaintiff, Lucetta, at the request of the said company defendant; and being so indebted, the said company defendant, in consideration thereof, then and there promised the said plaintiff, Lucetta, to pay her the said last-mentioned sum of money, on request:

Yet the said company defendant, although often requested so to do, have hitherto wholly neglected and refused and still neglect' and refuses to pay all or either of the said sums of money, or any part thereof, to the said plaintiff Lucetta.

To the damage of the said plaintiff Lucetta twenty thousand dollars, and therefore the said plaintiffs bring their suit, &c.

N. W. SHARPLESS,
*Plaintiff's Atty.*

And afterwards, to wit, on the 10th day of March, in the year last aforesaid, the said defendants pleaded.

The defendants, by Samuel C. Perkins, esq., their attorney, pleads—

1. Set-off.

2. And for a further plea in this behalf the defendants, as to the first count of the declaration, say that the said plaintiff was not interested in the life of the said Andrew J. Chew, in manner and form as the plaintiffs hath in that behalf alleged; and of this the defendants put themselves upon the country, &c.

27

3. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the policies of insurance in said counts mentioned were obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants, and by the misrepresentation of the plaintiff by her agent, the said Andrew J. Chew, and others in collusion with her; wherefore the defendants say that the said policies of insurance in said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the policies of insurance in said counts mentioned were obtained from the defendants by the fraud, falsehood, and misrepresentation of the plaintiff, by her agent, the said Andrew J. Chew, and others in collusion with her, to wit, as to the true and correct age of the said Andrew J. Chew, and as to the diseases or injuries with which the said Andrew J. Chew had been afflicted, and by the fraudulent suppression, concealment, and withholding from the defendants by the plaintiff, by her agent, the said Andrew J. Chew, and others in collusion with her, of certain material information in regard to the party whose life was to be insured, to wit, the said Andrew J. Chew, and then affecting the risk, and which before and at the time of the issuing of said policies were known to the plaintiff, and with which the defendants ought then to have been made acquainted, to wit, that the said Andrew J. Chew was thirty-six years of age, and that the said Andrew J. Chew had been ruptured; wherefore the defendants say that the said policies of insurance in said counts mentioned were and are void in law, and this the defendants are ready to verify, &c.

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5. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in said counts mentioned were obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants, and by the misrepresentation of the plaintiffs; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law, and this the defendants are ready to verify, &c.

29

6. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in said counts mentioned were obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants and by the misrepresentation of the said Andrew J. Chew; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

7. And for a further plea in this behalf the defendants, as to the first

and second counts of the declaration say, that the policies of insurance in said counts mentioned were obtained from the defendants by
30 the fraud, falsehood, and misrepresentation of the plaintiff, to wit, as to the true and correct age of the said Andrew J. Chew, and as to the diseases or injuries with which the said Andrew J. Chew had been afflicted, and by the fraudulent suppression, concealment, and withholding from the defendants by the plaintiff of certain material information in regard to the party whose life was to be insured, to wit, the said Andrew J. Chew, and then affecting the risk, and which, before and at the time of the issuing of said policies, were known to the plaintiff, and with which the defendant ought then to have been made acquainted, to wit, that the said Andrew J. Chew was thirty-six years of age, and that the said Andrew J. Chew had been ruptured; wherefore the defendants say that the said policies of insurance in said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

8. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposed answers and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof, should form the basis of the contract of insurance,
31 and that any untrue or fraudulent answers should render the said policies null and void. And the defendants say that one of the said answers, being the answer to question four, (4,) to wit, "Place and date of birth of the party whose life is to be insured," (meaning whereby the said Andrew J. Chew,) answer four, (4.) "Born New Jersey, in 1835," whereas in truth and in fact the said Andrew J. Chew well knew, to wit, at the time of the making the said answer, that he was not born in the year 1835, but was born several years prior to the said year 1835, to wit, October 28, 1828; wherefore the defendants say that the said policies of insurance in said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

9. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew, in the said policies of insurance referred to and made part thereof, should form the basis of the contract of insurance, and that any untrue or fraudulent answers should render the said
32 policies null and void. And the defendants say that one of the said answers, being the answer to question five, (5,) "Age and birthday," (meaning thereby the age of the said Andrew J. Chew,) answer five, (5.) "Thirty years, October 28, as near as I can recollect," whereas in truth and in fact the said Andrew J. Chew well knew, to wit, at the time of the making the said answer, that his age at his next birthday would not be thirty years, but on the contrary would be, to wit, thirty-seven years; wherefore the defendants say that the said policies of insurance in said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

10. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof should form the basis of the contract of insurance,

and that any untrue or fraudulent answers should render the said policies null and void. And the defendants say that one of the said
33 answers, being the answer to question eleven, (11,) to wit, "Has the party ever had any of the following diseases; if so, how long, and to what extent? Gout, insanity, palsy, affection of the brain, fistula, spitting of blood, dropsy, fits, consumption, epilepsy, palpitation, asthma, rupture, yellow fever, bronchitis, convulsions, apoplexy, diseases of the lungs, diseases of heart, paralysis," (the party thereby meaning the said Andrew J. Chew,) answer eleven, (11,) "None," whereas in truth and in fact the said Andrew J. Chew well knew, to wit, at the time of his making the said answer, that he had had one of the diseases or afflictions mentioned in said question, to wit, rupture; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

11. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof should form the basis of the contract of insurance,
34 and that if the said proposal, answers, and declarations should be found in any respect false or fraudulent, then said policies of insurance should be null and void. And the defendants say that certain answers of the said Andrew J. Chew were at the time of the making thereof false and untrue; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law; and this the defendants are ready to verify, &c.

12. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof should form the basis of the contract for insurance, and that if the said proposal, answers, and declarations should be found in any respect false or fraudulent, then said policies of insurance should be null and void. And defendants say that one of said answers, being the answer to the question four, (4,) to wit, "Place and date of
35 birth of the party whose life is to be insured," (meaning thereby the said Andrew J. Chew,) answer four, (4,) "Born New Jersey, in 1835;" and that the said answer was false and untrue, for inasmuch as the said Andrew J. Chew was not born in 1835, but was born, to wit, in the year 1828; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law; and this they are ready to verify, &c.

13. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof should form the basis of the contract for insurance, and that if the said proposal, answers, and declarations should be found in any respect false or fraudulent, then said policies of insurance should be null and void. And the defendants say that one of said answers, being the answer to the question five, (5,) "Age next birthday," (meaning thereby the age of the said Andrew J. Chew,) answer five, (5,) "Thirty

years, October 28, as near as I can recollect;" and that the said
36 answer was false and untrue, for inasmuch as the said Andrew J. Chew's age next birthday would not have been thirty years, but would have been, to wit, thirty-seven years; wherefore the defendants say the said policies of insurance in the said counts mentioned were and are void in law; and this they are ready to verify, &c.

14. And for a further plea in this behalf the defendants, as to the first and second counts of the declaration, say that the said policies of insurance in the said counts mentioned were made upon the condition that the statements in the proposal, answers, and declarations by the said Andrew J. Chew in the said policies of insurance referred to and made part thereof should form the basis of the contract for insurance, and that if the said proposal, answers, and declarations should be found in any respect false or fraudulent, then said policies of insurance should be null and void. And the defendants say that one of the said answers, being the answer to the question eleven, (11,) to wit: "Has the party ever had any of the following diseases; if so, how long and to what extent?
37 Gout, insanity, palsy, affection of the brain, fistula, spitting of blood, dropsy, fits, consumption, epilepsy, palpitation, asthma, rupture, yellow fever, bronchitis, convulsions, apoplexy, diseases of the lungs, diseases of the heart, paralysis," (the party meaning thereby the said Andrew J. Chew,) answer eleven, (11,) "None," and that the said answer was false and untrue, for inasmuch as the said Andrew J. Chew had one of the diseases or afflictions mentioned in the said question, to wit, rupture; wherefore the defendants say that the said policies of insurance in the said counts mentioned were and are void in law; and this they are ready to verify, &c.

15. And for a further plea in this behalf the defendants, as to the second count of the declaration, say that the said plaintiff had not, at the time of the making or the issuing of the said policy of insurance in said court mentioned, or at any time afterwards, an interest in the life of the said Andrew J. Chew to support the said policy of insurance; and this the defendants are ready to verify, &c.

16. And for a further plea in this behalf the defendants, as to the third, fourth, and fifth counts of the declaration, plead non assumpserunt.

SAML. C. PERKINS,
*Defts.' Atty.*

Per H. T. K.

To Clerk C. C. U. S.

38 And as to the several pleas of the said defendants by them above pleaded, the said plaintiffs, by Nathan H. Sharpless, their attorney, reply:

1. As to the first plea they say nil debet.

2. As to the second plea they say "similiter & issue."

3. As to the third plea they say that the said policies of insurance were not obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants and by the misrepresentation of the plaintiff by her agent, the said Andrew J. Chew, and others in collusion with her; and this the said plaintiffs pray may be inquired of by the country.

4. As to the fourth plea they say that the said policies of insurance were not obtained from the defendants by the fraud, falsehood, and misrepresentation of the plaintiff by her agent, the said Andrew J.

39 Chew, and others in collusion with her, as to the true and correct age of the said Andrew J. Chew, and as to the diseases or injuries with which the said Andrew J. Chew had been afflicted, and by the fraudulent suppression, concealment, and withholding from the defendants by the plaintiff, by her agent, the said Andrew J. Chew, and others in collusion with her, of certain material information in regard to the said Andrew J. Chew, then affecting the risk, and which, before and at the time of the issuing of said policies, was known to the said plaintiff, and with which the said defendants ought then to have been made acquainted, in manner and form as by the said defendants above in that behalf alleged; and this the said plaintiffs pray may be inquired of by the country.

5. As to the fifth plea they say that the said policies of insurance were not obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants, and by the misrepresentation of the plaintiff; and this the said plaintiffs pray may be inquired of by the country.

40 6. As to the sixth plea they say that the said policies of insurance were not obtained from the defendants by the fraud, covin, and wrongful concealment of certain material information which ought then to have been communicated to the defendants and by the misrepresentation of the said Andrew J. Chew; and this the said plaintiffs pray may be inquired of by the country.

7. As to the seventh plea they say that the said policies of insurance were not obtained from the defendant by the fraud, falsehood, and misrepresentation of the said plaintiff, and by the fraudulent suppression, concealment, and withholding from the defendants by the plaintiff of certain material information in regard to the said Andrew J. Chew then affecting the risk, and which before and at the time of the issuing of said policies were known to the plaintiff, and with which the defendants ought then to have been made acquainted in manner and form as by the defendants above in that behalf alleged; and this the said plaintiffs pray may be inquired of by the country.

8. As to the eighth plea they say that the said Andrew J.
41 Chew, at the time of making the said answer to the said question four, (4,) did not well know that he was not born in the year 1835, but that he was born several years prior to the said year 1835, to wit, October 28, 1828; and this the said plaintiffs pray may be inquired of by the country.

9. As to the ninth plea they say that the said Andrew J. Chew, at the time of the making of the said answer to the said question five, (5,) did not well know that his age at his next birthday would not be thirty years, but, on the contrary, that it would be, to wit, thirty-seven years; and this the said plaintiffs pray may be inquired of by the country.

10. As to the tenth plea they say that the said Andrew J. Chew, at the time of making the said answer to said question eleven, (11,) had not had any one of the diseases mentioned therein; and this the said plaintiffs pray may be inquired of by the country.

11. As to the eleventh plea they say that the said answers of the said Andrew J. Chew were not at the time of the making thereof false and untrue; and this the said plaintiffs pray may be inquired of by the country.

42 12. As to the twelfth plea they say that the said Andrew J. Chew was not born, to wit, in the year 1828; and this the said plaintiffs pray may be inquired of by the country.

13. As to the thirteenth plea they say that the age of the said Andrew J. Chew at his next birthday occurring after the time of his making answer to the said question five (5) would not have been thirty-seven years; and this the said plaintiffs pray may be inquired of by the country.

14. As to the fourteenth plea they say that the said Andrew J. Chew, at the time of the making of said answer to said question eleven, (11,) had not had any of the diseases mentioned therein; and this the said plaintiffs pray may be inquired of by the country.

15. As to the fifteenth plea they say that the said plaintiff, at the time of the making and issuing of the said policy of insurance and thereafter until the time of his death, an interest in the life of the said Andrew J. Chew to support the said policy of insurance; and this the said plaintiffs pray may be inquired of by the country.

16. As to the sixteenth plea they say, "similiter & issue."

SHARPLESS,
*Atty. for Plaintiff.*

To SAMUEL BELL, Esq.,
*Clerk C. C. U. S., E. D. of Pa.*

43 And the defendants say that the replications of the plaintiff to the fourth, seventh, tenth, twelfth, thirteenth, and fourteenth pleas of the defendants are not sufficient in law.

And the defendants state and show to the court here the following causes of demurrer to the said replication to the said fourth plea—that is to say, that the said replication is double, in this, that the plaintiff hath alleged that the said policies of insurance in the first and second counts of the declaration were not obtained by the fraud, &c., of the plaintiff, by her agent, &c., as to the true and correct age of said Andrew J. Chew, and as to the diseases or injuries with which the said Andrew J. Chew had been afflicted, and by the fraudulent suppression, &c., by the plaintiff, by her agent, &c., of certain material information in regard to said Andrew J. Chew then affecting the risk, and which before, &c., was known to the plaintiff, and with which the defendants ought then to have been made acquainted in manner and form as alleged; and

44 also because the allegation of the plaintiff in the said replication ought to have been laid in the disjunctive and not in the conjunctive, both as respects the two principal branches of the plea, to wit, fraud, falsehood, and misrepresentation, and, 2nd, suppression, concealment, and withholding, and as respects the subdivisions of said principal branches; and also that said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon and should on the trial prove fraud, &c., as to the true and correct age of said Chew, though not as to the diseases or injuries with which said Chew had been afflicted, or should prove suppression, &c., of material information affecting the risk, and with which the defendants ought to have been made acquainted, although not as to such material information not being known to the plaintiff, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore the plaintiff would have no right to maintain the action.

2. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said seventh

45 plea, that is to say, that the said replication is double, in this, that the plaintiff hath alleged that the said policies of insurance in the first and second counts of the declaration were not obtained by the fraud, &c., of the said plaintiff, and by the fraudulent suppression,

&c., by the plaintiff of certain material information in regard to the said Andrew J. Chew, then affecting the risk, and which before, &c., was known to the plaintiff, and with which the defendants ought then to have been made acquainted in manner and form as alleged; and also because the allegations of the plaintiff in the said replication ought to have been laid in the disjunctive and not in the conjunctive, both as respects the two principal branches of the plea, to wit, 1st, fraud, falsehood, and misrepresentation, and, 2nd, suppression, concealment, and withholding, and as respects the subdivisions of said principal branches; and also that the said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon and should on the trial prove that the said policies were obtained by the fraud, &c., of the said plaintiff, though not by the fraudulent suppression, &c., by the plaintiff of certain material information in regard to the said Andrew J. Chew, then affecting the risk, &c., or should prove suppression,
46 &c., of material information affecting the risk and with which the defendants ought to have been made acquainted, although not as to such material information not being known to the plaintiff, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore plaintiff would have no right to maintain the action.

3. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said tenth plea, that is to say, because it is argumentative, the plea aver'ing directly the knowledge of said Chew, as to his having had one of the diseases mentioned, to wit, rupture, while the replication denies that he had had any of the diseases mentioned in the plea. And also because the said replication is too large in its denial, as applying to all the diseases mentioned in said plea. And also that said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon and should on the trial prove that the said Chew had had the diseases particularly mentioned in defendants' tenth plea, to wit, rupture,
47 and that he knew it, though not that he had had all the diseases mentioned in the question set forth in said tenth plea, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore plaintiff would have no right to maintain the action.

4. And the defendants state and show to the court here the following causes of demurrer to the said replication to the said twelfth plea, that is to say, because the said replication does not tender an issue upon the material allegation of the plea, which is the falsity of the answer that said Chew was born in the year 1835. Also because said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and should on the trial the plaintiff prove that the said Chew was born in 1826 or 1829 or 1830, or any other year except 1828, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore plaintiff would have no right to maintain the action. Also because it is uncertain and no answer to the plea, inasmuch as it does not *date* when said Andrew J. Chew was born.

5. And the defendants state and show to the court here the
48 following causes of demurrer to the said replication to the said thirteenth plea, that is to say, because the said replication does not tender issue, upon the material allegation of the plea, which is the falsity of the answer that the age of the said Andrew J. Chew at his next birthday would be thirty years. Also, because said replication tends

to raise an immaterial issue, inasmuch as if the defendants should join issue thereon, and on the trial the plaintiff should prove that the age of the said Andrew J. Chew at his next birthday would be thirty years, also, because said replication tends to raise an immaterial issue, inasmuch as if the defendants should join issue thereon and on the trial the plaintiff should prove that the age of the said Andrew J. Chew at his next birthday would have been thirty-two, thirty-four, or thirty-six years, or any other age except thirty-seven years, such issue must be found for the plaintiff, although it would be manifest that the policies must be void, and therefore plaintiff would have no right to maintain the action. Also, because it is uncertain and no answer to the plea, inasmuch as it does not state the age of the said Andrew J. Chew at his next birthday.

49 6. And the defendants state and show to the court here the following causes of demurrer to the said replication to the fourteenth plea, that is to say, because said replication is argumentative, the allegation of the plea being that the answer to the question 11 mentioned in said plea was false and untrue in regard to one special disease set forth in said question, while the replication denies that the said Chew had had any of the diseases mentioned therein. And also because said replication is too large in its denial as applying to all the diseases mentioned in said plea.

7. And the defendants state and show to the court here the following further causes of demurrer to the said replications to the said fourth, seventh, tenth, twelfth, thirteenth, and fourteenth pleas, respectively, that is to say, that the said replications are in other respects uncertain, informal, and insufficient.

SAML. C. PERKINS,
*Defts.' Atty.*,
Per H. T. K.

To Clk. C. C. U. S.

50 And the defendants, as to the replications of the plaintiffs to the first, third, fifth, sixth, eighth, ninth, eleventh, fifteenth, and sixteenth pleas of the defendants, and which the plaintiffs hath prayed may be inquired of by the country, do the like.

SAML. C. PERKINS,
*Defts'. Atty.*,
Per H. T. K.

To Clerk C. C. U. S.

51 The defendants, in pursuance of agreement of counsel, and with leave of the court first had and obtained, plead non assumpserunt and set-off, with leave, &c.

SAML. C. PERKINS,
*Defts.' Atty.*,
Per H. T. K.

To Clk. C. C. U. S.

52 The plaintiffs reply as to the additional pleas of the said defendants, "Similiter & issue & nil debet."

SHARPLESS,
*Plffs'. Atty.*

APRIL 23, 1873.

To clerk C. C. U. S., E. D. P.

53 And now, April 19, 1873, after hearing and argument upon defendants' demurrer to the plaintiffs' replications to the 4th, 7th, 10th, 12th, 13th, and 14th pleas of the defendants, by leave of the court first had and obtained, it is agreed that the said pleas mentioned, with the replications thereto, and the demurrers to said replications be withdrawn, and that the defendants may file pleas of non-assumpserunt and set off with leave, &c., in lieu of the said pleas, the replications to which were demurred to; that said pleas be treated and regarded as notice of special matter; and that on the trials the defendants may under said pleas herein agreed to be filed, give in evidence any facts which might have given under the said 4th, 7th, 10th, 12th, 13th, and 14th pleas, together with any facts which show or tend to show, by reason of fraud or otherwise, that the defendants never undertook and promised as in plaintiffs' declarations alleged.

N. H. SHARPLESS,
*Atty. for Plffs.*

SAML. C. PERKINS, *Plffs'. Atty.*
APRIL 23RD, 1873.

54 And afterwards, to wit, on the sixth day of May, in the year of our Lord one thousand eight hundred and seventy-three, a jury being called come, to wit:

1. Matthias Myers,
2. John S. Baker,
3. Edwin A. Merrick,
4. Jesse R. Brown,
5. Washington J. Quiggley,
6. Isaac W. Roberts,
7. William M. Taylor,
8. Joseph H. Lambert,
9. Richard Wood,
10. William Levy,
11. Amos Bateman, and
12. Benjamin H. Stuckert,

who are respectively sworn and affirmed to try the issues joined, &c.

And af'erwards, to wit, on the sixteenth day of May, in the year last aforesaid, the jurors aforesaid, on their oaths and affirmations aforesaid, respectively, do say that they find for the defendants.

55 *Motion for a rule for a new trial in the above case, on behalf of the plaintiffs.*

REASONS.

1 The plaintiffs were surprised by the testimony of defendant' witness, Elizabeth Campbell, who testified in effect that she worked with the plaintiff, Mrs. France, in the Gloucester mills, in 1841 or 1842; whereas the first loom was placed in mill No. 1 of said mills in August, 1845, and the first loom in mill No. 2, (in which the said witness worked,) on May 1, 1847.

2. The learned judge who tried the cause erred in telling the jury in substance that a man who insured himself as of the age of thirty years "as near as he could recollect," "the above being as near correct as I can remember" thereof, warranted to the insurer that his age was not materially different from 30 years; that is, that as a matter of law a man was bound to know his age within about a year, instead of telling the jury that upon that question so far as it touched a recovery
56 on the second policy there was no other warranty than that the assured stated his age to the best of his recollection at the time of taking the application.

SHARPLESS,
*Plffs'. Atty.*

57 *Affidavit of equitable plaintiff.*

Lucetta T. France, one of the plaintiffs in the above-entitled cause, being duly affirmed according to law, saith that the production of the witnesses, Elizabeth Campbell and Mary Chew, in surrebuttal by the defendants in the above case were a great surprise to the plaintiffs, and under the order of the court, previously made, this deponent had no time afforded her in which to contradict the statements of the witness, Elizabeth Campbell, on the stand; that since the said trial was concluded, upon diligent inquiry and examination, this deponent has discovered that the said Elizabeth Campbell was about from six to seven years out of the way in her statement as to the time at which she was a resident of Gloucester County, New Jersey, and an inmate of the dwelling of deponent's parents; that instead of having resided with
58 them in 1841 or 1842, as the evidence she gave would tend to show, she, in point of fact, resided in that county from 1847 to 1848, as the records of the mill in which she worked—the contents of which were wholly unknown to this deponent until after the case aforesaid was closed—will conclusively show. This deponent also has discovered since the trial, by a mere accident, that at the time it was testified by the witnes'es, the Eldridges, that Andrew J. Chew was, according to *to* his alleged own admission, eighteen years of age, he was in point of fact a boy of from ten to twelve years of age, working for a Mr. Coopley Browning, he being at that time moreover a stout, hearty boy; that this last information came unexpectedly to the knowledge of this deponent while she was inquiring of Mr. Abraham Browning whether the Eldridges had not been mistaken in their statement that he (Abraham Browning) had been present or concerned in the cancelling of the indentures of apprenticeship of the said Andrew J. Chew, which statement of the said Eldridges the said Abraham Browning informed this deponent, was one of which he had no recollection; and that, had it been true, he throught it most likely he would have remembered it.

59 LUCETTA T. FRANCE.

Affirmed and subscribed before me this 2nd day of June, A. D. 1873; the words "in that county" above 1st substituted for there, and also the name "Cooper" for "Joshua."

J. COOKE LONGSTRETH,
*U. S. Commissioner.*

60 *Additional reasons for new trial.*

3. Since the trial, the plaintiffs have discovered the following additional evidence wholly unknown to them at the time of the trial, and which at that time could not by reasonable diligence have been obtained by them, the materiality of which testimony, moreover, was first developed in the conclusion of said trial, said evidence being as follows, to wit: 1st, that in the spring of 1864, at which time the plaintiff's witnesses, the Eldridges, were testifying, the said Andrew J. Chew was eighteen years of age and an apprentice of a Mr. Issard, but he was in fact a boy ten or twelve years of age, stout and hearty, (in that particular also contradicting the Mess. Eldridge,) in the employment of one Coopley Browning, of Camden, New Jersey; and, 2nd, that the witness, Elizabeth Campbell, was wholly mistaken in stating the time as 1841 or 1842 when she was in the Gloucester mills, evidence coming to the knowledge of the plaintiffs since the evidence was closed showing conclusively that the said period was from 1847 to 1849.

SHARPLESS,
*Atty. for Mr. France.*

61 And afterwards, to wit, on the eighteenth day of October, in the year 1873, the motion for a new trial having been considered by the court, it is ordered that a new trial be granted.

Whereupon afterwards, to wit, on the eighth day of April, in the year of our Lord one thousand eight hundred and seventy-four, a jury being called, come, to wit:

1. Richard Dale,
2. John Stilz, senior,
3. William F. Richardson,
4. Henry G. Haedrich,
5. William Meneeke,
6. William W. Alter,
7. William T. Donaldson,
8. Theodore Ludwig,
9. William Boehm,
10. Jacob Loudenslager,
11. Jacob H. Beattas, and
12. John S. Cromburger,

who are respectively sworn to try the issue joined, &c.

And afterwards, to wit, on the sixteenth day of April, in the year of our Lord last aforesaid, the jurors aforesaid, on their oaths aforesaid, respectively, do say that they find for the plaintiffs and assess the
62 damages at ten thousand nine hundred and fifty dollars, ($10,950.00,) with costs.

63 And thereupon, forasmuch as the court now here is not as yet advised about giving judgment of and upon the premises, day is therefore given to the said parties to be before the court, to wit, on the twenty-ninth day of April, in the year 1874, for hearing judgment of and upon the premises, because the said court here is not yet advised thereupon, at which said day, to wit, the twenty-ninth day of April, A. D. 1874, before the honorable William McKennan, circuit judge, and honorable John Cadwalader, district judge, come the said David France and Lucetta T. France, his wife, in right of the said Lucetta and to her use, by their attorney aforesaid, whereupon the premises being seen and fully understood by the court here, and mature deliberation being had thereon, it is considered that a new trial be denied upon the plaintiffs remitting four hundred and seventy-six (476) dollars from the amount of the verdict as found by the jury; and it is ordered that judgment in favor of plaintiffs for the sum of ten thousand four hundred and seventy-four dollars (10,474,) and also adjudged to the said plaintiffs by the court now here at their request for increase of their said costs and charges, which said damages in the whole amount to the sum of

And the said defendants in mercy, &c.

64 *Defendants' motion and reasons for a new trial.*

And now, April 20, 1874, by leave of the court first had and obtained, without waiver of the exceptions taken to the ruling of the court on the questions of evidence, and to the charge of the court, defendants move for a new trial and file the following reasons:

1. There was error in the refusal to admit in evidence on the part of defendants, the policy of July 12, 1865, No. 11,211, on the life of Andrew J. Chew.

2. There was error in the admission on the part of plaintiffs, of the question to Dr. Levis, "Does or does not the existence of a reducible rupture in a subject of life-insurance, in your opinion, appreciably increase the risk of the underwriters?" the same being incompetent and irrelevant under the terms of the policy sued on.

3. The charge that "it would be manifestly unjust to release from his

contract a party who assumed its obligations with a full knowledge of its import, and accepted the stipulated consideration," was calculated to mislead the jury, as there was no evidence to show that defendants "assumed the obligations" of the policy in question, with any knowledge in this respect beyond the mere fact of Mrs. France being Chew's sister.

4. There was error in charging that, "Under the circumstances shown here, Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee; this was a sufficient substantial interest to support the policy."

5. There was error in charging that Chew, in his application, "must be understood, therefore, as stipulating only for the integrity and approximate accuracy of his answers, and not for their absolute verity;" and that, "with the qualification to the statements in the answers, 'the above is as near correct as I remember,' the plaintiffs' right to recover will not be defeated unless it appears that some one of the answers was consciously incorrect."

6. There was error in charging that "to avoid the policy, then, the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness."

7. There was error in leaving the question of the policy being void on the ground of mistatement as to the age of the assured to depend on the question, whether "he knew, or had reason to believe, that the year of his birth as stated in the answer did not correctly indicate his age."

8. There was error in charging that if the assured had had consumption or rupture, and the fact was "knowingly mis'tated by him," the plaintiff cannot recover.

9. There was error in assuming in the charge, in connection with the question as to Chew's having had consumption, as a positive fact, that Chew had actually been examined by two physicians of the
65 company, (defendants,) in July and September, 1865, when one of the defences was a denial that Chew had ever been examined under the application of September, 1865.

10. There was error in charging that even if Chew had the consumption at the time of the application in September, 1865, "under such circumstances, his answer cannot be regarded as untrue in a sense that would affect the validity of the policy."

11. There was error in charging that "If it appears that the rupture had been completely reduced so that its effects had entirely passed away, and it had ceased to affect his health, or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue as nearly as he could remember."

12. There was error in declining categorically to answer the points presented by defendants, on the ground that all that was embodied in them was sufficiently answered as far as necessary in the general charge.

13. The verdict was against the evidence as to the question of the age of Chew.

14. The verdict was against the evidence as to the rupture.

15. The verdict was against the evidence as to the consumption.

16. The verdict was against the evidence as to the question of personation.

17. The verdict was against the weight of the evidence.

18. The verdict was against the charge of the court.

19. The verdict was against the law.

20. Because the learned judge erred in instructing the jury that if they found for the plaintiff, their verdict should be for $10,000 with interest, &c.; and did not instruct them that the amount of the premium-notes outstanding and unpaid, which were given in evidence, to wit, $434.82, should be deducted from the $10,000. This would have made a difference in the verdict of $476.

CHRISTIAN KNEASS,
SAMUEL C. PERKINS,
*For Defendants.*

To Clerk C. C. U. S.

66 And afterwards, to wit, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-four, the said defendants, by Samuel C. Perkins, esquire, their attorney aforesaid, come into our said court here and file of record their bill of exceptions, which said bill being read is as follows, to wit:

Be it remembered that at the sessions of October, No. 7, A. D. 1872, came David France and Lucetta T. France, his wife, in right of said Lucetta T. and to her use, into the circuit court of the U. S. for the eastern district of Pennsylvania, and impleaded the Ætna Life-Insurance Company, of Hartford, Connecticut, in a certain plea of trespass on the case, &c., in which the said plaintiffs declared, (prout narr. MSS. page 2, printed page ,) and the said defendants pleaded (prout pleas MSS. page 26 & 51, printed page .) And thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the honorable William McKennan, circuit judge of the said court, on Wesnesday, the eighth day of April, A. D. 1874, the aforesaid issue between the said parties came on to be tried by a jury of the said district for that purpose duly empannelled, to wit:

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| | 1. Richard Dale, | 7. William T. Donaldson, |
| | 2. John Stilz, senior, | 8. Theodore Ludwig, |
| 67 | 3. William F. Richardson, | 9. William Boehm, |
| | 4. Henry G. Haedrich, | 10. Jacob Loudenslager, |
| | 5. William Meneke, | 11. Jacob H. Beattas, and |
| | 6. William W. Alter, | 12. John S. Cromburger, |

at which said day came as well the said plaintiffs as the said defendants by their respective attorneys; and the jurors of the jury afore said, impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn or affirmed to try the said issue; and upon the trial the counsel of the said plaintiffs put in evidence a policy of insurance, No. 12796, made and executed by the defendants under the hand of their president, attested by their secretary, dated Hartford, Connecticut, September 13, 1865, and countersigned by C. H. Brush, manager of defendants at Philadelphia, September 18, 1865, for $10,000 for the term of the life of Andrew J. Chem for the benefit of Mrs. Lucetta T. France; annual premium $243.50; one-half note.

(Prout copy of the same hereto annexed marked "Exhibit A." MSS. page 89, printed page .)

68 Also six receipts given by defendants for the annual premiums from September 13, 1866, to September 13, 1871, both inclusive. (Prout copies of same hereto annexed marked "Exhibit B." (See MSS. page 92, printed page .)

69 Also the application (produced by defendants on call) signed by Andrew J. Chew and Lucetta T. France, dated Philad'a, Sept. 13, 1865, upon which the policy was issued. (Prout copy of the same hereto annexed marked "Exhibit C.") (See MSS. page 95, printed page .)

Also the certificate of the medical examination of Andrew J. Chew, endorsed on the said application and dated the same day. (Prout copy of the same hereto annexed marked "Exhibit D.") (See MSS. page 98, printed page .)

It is admitted that Andrew J. Chew died May 25th, 1872.

Also that on the 12th or 13th of June, 1872, certain proofs were furnished at the office of the defendants in Philadelphia, and received by the defendants at Hartford, June 15, 1872, as follows: Certificate of Dr. Edward F. Guth. Affidavits of John Dunn, John S. Kennelly, Charles M. Leisenring, Mrs. Mary Chew, all sworn to June 11th, 1872; and two affidavits of Mrs. Lucetta T. France, both sworn to on the 12th of June, 1872.

All the six affidavits were on the same sheet in the order stated and were received by the defendants at one and the same time as proofs of loss. Plaintiffs then closed.

70 Defendants then offered and read in evidence the certificate and six affidavits of June 11th and 12th above mentioned. (Prout copies of the same hereto annexed marked "Exhibit E, Nos. 1, 2, 3, 4, 5, 6, and 7.") (MSS. page 100, printed page .) They also offered in evidence policy of insurance No. 11211, made and executed by the defendants under the hand of their president, attested by their secretary, dated Hartford, Connecticut, July 12th, 1865, and countersigned by C. H. Brush, the manager of defendants at Philadelphia, July 17th, 1865, for $10,000, for the term of the life of Andrew J. Chew, for the benefit of Mrs. Lucetta T. France, and in the same form as the one sued on, (Prout copy of the same annexed hereto marked "Exhibit $F^1$.") (MSS. page 105,) together with the application on which said policy was issued, signed Andrew J. Chew and Lucetta T. France, dated Philadelphia, July 12th, 1865, and the certificate of the medical examination of Andrew J. Chew endorsed thereon and dated the same day.

To the admission in evidence of which policy, application, and certificate plaintiffs' counsel objected as irrelevant.

The learned judge thereupon overruled the offer as to the policy, to which ruling the defendants then and there excepted, and this

71 first bill of exceptions is sealed.

The objection to the application and certificate was overruled and the same were thereupon read in evidence. (Prout copies of the same hereto annexed marked "Exhibit $F^2$ and $F^3$.") (MSS., 108.) Defendants then put in evidence three promissory notes made by Lucetta T. France, (signatures admitted,) for "part premium due and payable on policy No. 12796," each at twelve months, and dated at Philad'a, one Sept. 13, 1869, for $153.55, one Sept. 13, 1870, for $159.52, and the third Sept. 13, 1871, for $121.75. (Prout copies of the same hereto annexed marked "Exhibit G, Nos. 1, 2, and 3.") (MSS. page 113, printed page .)

Defendants then gave evidence tending to show that said Andrew J. Chew, at the time of the application and issue of the policy sued on, would have been thirty-seven (37) or at least thirty-five (35) years old his next birth-day, instead of thirty (30) as stated in the application, and that he was born October 28, 1828.

Also evidence tending to show that said Andrew J. Chew had been ruptured from infancy, and so continued up to the date of the applica-

tion and policy, and up to the time of his death; and that he wore a truss from about at least the year 1846 up to his death.

Also gave evidence that at the time of the application and
72 issue of the policy, Lucetta T. France was married to her husband, whose name is joined with hers as a party-plaintiff, and that she was one of the insured's three living sisters, both of the others being also married women at the time mentioned; and that she was in no way dependent on Andrew J. Chew for her support.

Also evidence tending to show that at the time the application was made and the policy issued, Andrew J. Chew was engaged to be married, and that his engagement was known to Mrs. France, and it was admitted that he actually was married the day after the application was made to the lady who was examined as his widow by the defendants, and that he left one child, the issue of this marriage.

Defendants also gave in evidence tending to show that at the time the application was made and the policy issued Andrew J. Chew was a person of little or no property, and in humble circumstances, earning his living as a ladies' shoemaker, in a small way, in a little shop which he rented, and that at the time of his death he was indebted to parties from whom he had bought leather and materials, and that he left no estate.

Also evidence tending to show that Chew knew at the time
73 the application was made and the policy issued that he was born October 28, 1828, and that his age next birth-day would be thirty-seven (37) instead of thirty, (30,) and that he had been ruptured from infancy, and had worn a truss from at least 1846 up to the time of his application; and that he had had consumption, or some disease of the lungs; and that he was subject to habitual cough and dyspepsia; and that he had been attended by physicians for severe disease within seven years then preceding.

Also evidence tending to show that the person examined upon the application of September 13, 1865, on which the policy was issued, was not, in fact, said Andrew J. Chew, the brother of Mrs. France, but some other person in good health.

They also gave in evidence that an annual premium of $243.50 on the life of a person 37 years old would secure an insurance for $8,089.79 only, instead of $10,000, to secure which would require an annual premium of $301.

Defendants then closed.

*Plaintiffs, in rebuttal,*

Gave evidence as to the age and the alleged rupture and con-
74 sumption or disease of the lungs, habitual cough, and dyspepsia, and as to the alleged severe disease and attendance of a physician on Chew.

Also evidence tending to show that Mrs. France had at different times loaned money to said Andrew J. Chew, to an amount of some $2,000 and upwards, prior to the policy of July 12, 1865, which had never been repaid, and also some $400 in September, 1865, which had not been repaid.

Also evidence as to the identity of the person actually examined upon the application of September 13, 1865, on which the policy was issued, with Andrew J. Chew.

Mrs. France, in her testimony, denied all knowledge of the papers received by defendants as proof of loss except the two affidavits made by erse lf.

Plaintiffs having called Dr. Richard J. Lewis as a medical expert proposed to ask him the following question:

"Does or does not the existence of a reducible rupture in a subject for life-insurance in your opinion appreciably increase the risk of the underwriters?"

To which defendants objected as incompetent and irrelevant under the terms of the policy sued on.

But the learned judge overruled the objection, and admitted
75 the question, to which ruling the defendants then and there excepted; and this second bill of exceptions is sealed.

Defendants in surrebuttal gave further evidence as to the age of Andrew J. Chew, and tending to show that the person examined upon the application of September 13, 1865, was not Chew; and also as to the pecuniary circumstances of Chew at the time of the application and of his marriage.

Both sides then closed.

76 Thereupon the counsel for defendants requested the learned judge to charge the jury as follows:

*Defendants' points.*

1. That if the jury believe that the application for insurance and the policy in question, though nominally in the name of Andrew J. Chew, for the benefit of Lucetta T. France, were in fact made and taken out by the said Lucetta T. France, for her own benefit, she must show an insurable interest in the life of said Andrew J. Chew before she can recover, and the mere fact that she was his sister did not give her such insurable interest.

2. If the jury believe that the premiums for the insurance, and the renewals thereof, were paid by said Lucetta T. France, whether in cash or by her notes, there is evidence from which the jury can find that the application for insurance was made, and the policy in question taken out by said Lucetta T. France for her own benefit.

3. That the mere fact that Lucetta T. France was the sister of Andrew J. Chew did not give her an insurable interest in his life, and in the absence of evidence of other grounds of her interest in his life the verdict must be for defendants.

4. If the jury believe that at the time the application for insurance was made and the policy in question issued Lucetta T. France was a married woman, and in no way dependent upon Andrew J. Chew for her support either in whole or in part, the mere fact that she was his sister would not give her an insurable interest in his life.

5. If the jury believe that at the time the application for insurance was made and the policy in question issued Andrew J. Chew was in such circumstances as to preclude any presumption that Lucetta T. France would be in any way dependent upon him for her support, either in whole or part, and she was not in fact at the time so dependent upon him, then the mere fact that she was his sister would not give her an insurable interest in his life.

6. Unless it affirmatively appear from the evidence that Andrew J. Chew at the time the application was made and the policy issued was in such circumstances as to induce a reasonable probability that upon his dying intestate Lucetta T. France might, as one of his next of kin, receive a portion of his estate, the mere fact of her being one of such next of kin would not give her an insurable interest in his life.

7. If at the time the application was made and the policy issued Lu-

cetta T. France was a married woman, she must, in order to have had any insurable interest in the life of Andrew J. Chew as a creditor, and to recover as such upon the policy, show affirmatively and positively that any monies alleged to have been loaned to him and in respect of which she claims to have been his creditor, were the monies of her separate estate; and there is no evidence in this case from which, under the law, the jury can find that any monies alleged to have been loaned to Andrew J. Chew by Mrs. France were the monies of her separate estate.

8. If at the time the application in the present case was made and the policy issued thereon Lucetta T. France already had a policy in full force of $10,000 on the life of Andrew J. Chew in the company defendants, then the creation or existence of an indebtedness by him to her subsequently to such prior policy and not exceeding the sum thereby insured, could not give an insurable interest in his life as a creditor in respect to the present policy.

77 9. If, under the instructions of the court, the only insurable interest which Lucetta T. France could have in the life of Andrew J. Chew was as his creditor, she can recover in any event only so much as the jury believe from the evidence she actually lent said Andrew J. Chew.

10. If the jury believe that the person whom Dr. Turner examined upon the application upon which the policy in question was issued was not Andrew J. Chew, the brother of Mrs. Lucetta T. France, to which Andrew J. Chew the policy was issued for her benefit, the policy is void for fraud.

11. That the answers to the questions contained in the application upon which the policy was issued are warranties; and if the jury believe that such answers or any of them, either in whole or in part, were false or untrue, the verdict must be for the defendants.

12. That even if the answers to the questions contained in the application are under the qualification inserted therein, as to recollection and remembrance, to be considered as representations, yet if they were false in a material respect the policy is void and the verdict must be for the defendants.

13. If the jury believe that Andrew J. Chew, at the time the application was made, was materially older than thirty years, the age stated in the application, the policy is void, and a difference in age of four to seven years is material.

14. That the expressions, "As near as I can recollect," and "As near correct as I remember," are not to be taken as giving an entirely indefinite limit to the answers in the application, but must be taken as meaning in respect to age, about the age and date of birth stated.

15. If the jury believe that the answers to questions Nos. 4 and 5 in the application for insurance, as to the date of birth, and age next birthday of said Andrew J. Chew, were false or untrue, the policy issued upon the application is void, and the verdict must be for the defendants.

16. If the jury believe that the answers to question No. 11 in the application for insurance, whether said Andrew J. Chew ever had any of the diseases therein specified, &c., was false and untrue as to any one of said diseases, the policy issued upon the application is void, and the verdict must be for defendants.

17. If at the time when the application for insurance was made and the policy issued Andrew J. Chew was or had been ruptured, he was bound in answer to question No. 11 to state the fact, and also how long

and to what extent; and if the jury believe that at the time mentioned he was or had been ruptured, his answer "None" to said question No. 11 was untrue and false, and the verdict must be for the defendants.

18. If at the time when the application for insurance was made and the policy issued Andrew J. Chew had or had had consumption, or any disease of the lungs, or any of the other diseases mentioned in said question No. 11, he was bound in answer to said question to state the fact, and also how long and to what extent; and if the jury believe that at the time mentioned he had or had had consumption or any disease of the lungs, or any of the other diseases mentioned in said question No. 11, his answer "None" to said question No. 11 was untrue and false, and the verdict must be for the defendants.

19. If at the time when the application for insurance was made and the policy issued Andrew J. Chew was "subject to habitual cough" from any cause, or to dyspepsia, he was bound in answer to question 12 to state the fact; and if the jury believe that at the time mentioned he was "subject to habitual cough" from any cause, or to dyspepsia, his answer "No" to said question 12 was untrue and false, and the verdict must be for the defendants.

78 20. If at the time the application for insurance was made and the policy issued A. J. Chew had had at any time during the preceeding seven years "any severe disease" of any kind, he was bound in answer to question 13 to state the fact and the particulars and the name of the attending physician, and if the jury believe that at the time mentioned he had had at any time during the last preceding seven years "any severe disease" of any kind, and had been attended by a physician, his answer "No," to said question 13, was untrue and false, and the verdict must be for the defendants.

21. If at the time the application for insurance was made and the policy issued A. J. Chew was ruptured, or consumptive, or had habitual cough, or was "afflicted with any disease or disorder" of any kind, he was bound in answer to question No. 14 to state the fact, "and what the disease or disorder was;" and if the jury believe that at the time mentioned, he was ruptured or consumptive, or had habitual cough, or was afflicted with any "disease or disorder" of any kind, his answer "No," to said question No. 14, was untrue and false, and the verdict must be for defendants.

22. Under the application and policy in question, Andrew J. Chew was bound to state every fact in regard to his then present or prior condition of health, of which he was aware, which might in any degree increase the risk; and if the jury believe that he was then or had at any previous time been ruptured, or was subject to habitual cough, and was aware of the fact and did not state it, the policy is void, and the verdict must be for the defendants.

23. It is not necessary in order that a material misrepresentation shall render the policy void, that the death should have occurred from a cause connected with the fact misrepresented.

24. That the fact that in the application of July 12, 1865, to the defendants for an insurance on the same life, the answers to the questions were absolute and without any qualification whatever, might reasonably lead the defendants to presume that the use in the answers to the questions in the second application of the expressions, "As near as I can recollect," and "As near correct as I remember," did not mean that the applicant had no knowledge on the subjects inquired of, but that he considered the answers nearly correct, without meaning to bind himself to strict accuracy.

25. That if the jury believe that upon the application of September 13, 1865, the said A. J. Chew suppressed any fact in regard to his health, the policy is void, and the verdict must be for defendants.

And thereupon the learned judge charged the jury as follows:

79 *Charge to the jury.*

APRIL 16, 1874.

MCKENNAN, Circuit J.:

This suit is brought to recover the amount of a policy of insurance, dated September 13, 1865, upon the life of Andrew J. Chew. It was effected by Chew upon his own life for the benefit of his sister, Lucetta T. France, and it is so stated upon its face. In consideration of the payment of $243.50 annually to the defendant, during the life of Chew, it stipulated to pay to Mrs. France, at his death, the sum of $10,000. Chew died on the 25th of May, 1872, and it is shown that the annual premium was regularly paid up to that time. It is also shown that the preliminary proofs of Chew's death, required by the policy, were duly made and furnished to the defendant.

The plaintiffs are, therefore, entitled to recover, unless some one of the grounds of defence can be maintained.

These several defences are—

1. That Mrs. France had no insurable interest in the life of Chew, and that the policy is void as a wagering policy.

2. That the answers to questions four, five, eleven, twelve, and thirteen, in the application for the insurance, were untrue.

3. That Chew was not the person who was examined by the medical examiner of the defendant, but was personated by another.

First. The contract is between the Ætna Insurance Company of the one part, and Chew of the other, for the assurance of his life. As a contract made by competent parties, founded upon the assured's interest in his own life, it is primarily binding upon both of them. But could they stipulate that the money to be paid by the underwiter should be applied to the benefit of the sister of the assured? I do not think such a stipulation is obnoxious to any principle of law or rule of public policy. Chew might lawfully assign a policy upon his own life to his sister, and the natural relation in which they stood to each other would be a valid consideration for the assignment; and the obligation of the underwriter would in no wise be impaired by it. Her desigation in the body of the policy as the beneficiary has only this effect, and is alike meritoriously supported by their near relationship. And it would be manifestly unjust to release from his contract a party who assumed its obligations with a full knowledge of its import and accepted the stipulated consideration for it. But under the circumstances shown here, Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee. This was a sufficient substantial interest to support the policy. It is not, therefore, invalid upon this ground.

Second. The policy provides, "That if the proposal, answers, and declaration made by the said Andrew J. Chew, and bearing date September 13, 1865, and which are hereby made part and parcel of the policy as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect false or fraudulent, then and in such case this policy shall be null and void." This clause incoporates into the policy the answers given by the assured to the questions pro-

pounded in the application, and so makes them integral parts of the contract. Their truth or falsehood is, therefore, to be considered as materially affecting the risk assured by the underwriter. But the answers here are qualified by the words appended at the foot of the application, "The above is as near correct as I remember," which are applicable to all the statements made by the assured. He must be understood, therefore, as stipulating only for the integrity and approximate accuracy of his answers, and not for their absolute verity. Without this qualification substantial error in any of his answers would avoid
80 the policy, irrespective of his motive, because he warranted their truth; with it, the plaintiffs' right to recover will not be defeated, unles it appears that some one of the answers was consciously incorrect.

To avoid the policy, then, the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness.

In answer to questions four and five in the application, the assured stated that he was born in New Jersey, in 1835, on the 28th of October, "as near as he could recollect," and that his age, on his next birthday, would be thirty years. If the jury are satisfied, from all the evidence, that he was born at the time of General Jackson's first election to the Presidency, in 1828, or even at the time of his re-election, in 1832, the answer was not approximately correct, but was untrue in a material respect, because a smaller annual premium was agreed to be taken by the underwriter than would otherwise have been required, and that he knew or had reason to believe that the year of his birth, as stated in the answer, did not correctly indicate his age, the policy is void, and the plaintiffs are not entitled to recover.

So, also, in answer to questions eleven, twelve, and thirteen, Chew stated that he had not had any of the diseases specified in question eleven; that he was not subject to habitual cough; and that he had not had any severe disease within seven years.

If he had had consumption or rupture, as is alleged, he was bound so to state; and if either of these facts had existed and was knowingly misstated by him, the plaintiffs cannot recover.

Under the evidence it is not probable that Chew knew or believed that he was affected by a disease of the lungs known as consumption. In view of the fact that he survived for years after it is alleged he was so affected, and of the result of his examination by two different physicians of the insurance company, in July and September, 1865, the jury will probably infer that such disease, if he had it at all, was not so far developed as to be capable of detection. Even if he had it then, under such circumstances his answer cannot be regarded as untrue, in a sense that would affect the validity of the policy.

Had he been ruptured? The evidence upon this point is apparently conflicting, but not, perhaps, irreconcileable. It is to be considered, however, under the guidance of the rule of law that the affirmative testimony of credible witnesses as to the existence of a fact is of greater weight than the testimony of equally credible witnesses that they have no knowledge of its existence, although they may have had opportunities to observe whether it did exist or not. It is the duty of the jury to reconcile it if they can; but if not, then to find the fact as it may be supported by the comparative weight of the evidence for and against it. If they find that Chew had been laboring under such hernial disorder the existence of this fact is made material by the agreement of the parties, and he was bound to answer truthfully with regard to it.

If, however, it appears that the rupture had been completely reduced, so that its effects had entirely passed away, and it had ceased to affect his health or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue, as nearly as he could remember. On the other hand, if the rupture had not been cured, it is hardly presumable that he could have forgotten it at the time of the application; and, if the jury so find, it was his duty to disclose the fact that he had been afflicted with this disease, and his negative answer will avoid the policy.

81 It is further claimed that his answer to the twelfth question is untrue. The cough referred to in this question is expressly characterized as "habitual." To establish the untruthfulness of this answer, therefor', it must be proved that the assured was, at the time of the application, subject to an habitual cough. Occasional attacks of coughing are not within the meaning of the question. But unless he was affected with an habitual cough when the answer was made, the answer is not to be taken as untrue, although he may have been previously subject to violent coughing spells; because falsehood cannot fairly be imputed to him, as to the present existence of an affection temporary in its nature and which passed away.

Third. Was Andrew J. Chew the person who was examined by Dr. Turner on the 13th of September, 1865? If he was not, a personation of him by another would undoubtedly avoid the policy. In determining the sufficiency of this defence, the jury will carefully consider the evidence by which it is supported. The whole question is for them. If the testimony of the witness, by which it is claimed to be made out, is, in its very nature, incredible, the jury are not bound to accept it as true. If it is apparent that the fact testified to by this witness is inherently improbable, and that the disclosure subsequently made by the promoter of the insurance was manifestly without motive and against her interest, the jury may for this reason reject the testimony as unworthy of belief. But if it is also irreconcilable with other facts and circumstances which are satisfactorily proved then it is plainly unreliable. The whole question is, however, submitted to the jury, with the simple additional remark that their own good sense will conduct them to a correct decision of it.

I have thus, gentlemen of the jury, indicated the rules of law by which you will be governed in the determination of this case.

I have not answered categorically the catechism propounded to me, because I think I have sufficiently answered, in a general way, all that is embodied in it. I therefore decline to answer it more specifically.

Nor do I deem it necessary to restate the evidence which has been given on the one side and on the other, because I am satisfied it is recollected with sufficient distinctness by you; and besides you must be governed by your own apprehension of it.

If, under the instructions you have received, you are satisfied the plaintiffs are entitled to recover, your verdict will be for the amount of the policy, $10,000, with interest from ninety days after June 12, 1872, when the preliminary proofs were furnished. If, on the other hand, you find that any of the defences set up by the defendant are made out, then your verdict will be generally for the defendant.

82 And thereupon the counsel for the defendants did then and there except to the aforesaid charge of the court, as follows:

83 Because the learned judge erred in charging the jury that "it would be manifestly unjust to release from his contract a party who assumed its obligations with a full knowledge of its import and

accepted the stipulated consideration," was calculated to mislead the jury, as there was no evidence to show that defendants "assumed the obligations" of the policy in question with any knowledge in this respect (the alleged interest of the party for whose benefit the life of Chew was insured) beyond the mere fact of Mrs. France being Chew's sister; and the instruction was calculated to mislead the jury.

2. There was error in charging that "under the circumstances shown here, Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee. This was a sufficient substantial interest to support the policy."

3. There was error in charging: "But the answers here [given by the assured to the questions propounded in the application] are qualified by the words appended at the foot of the application, 'The above is as near correct as I remember,' which are applicable to all the statements made by the assured. He must be understood, therefore, as stipulating only for the integrity and approximate accuracy of his answers, and not for their absolute verity. Without this qualification, substantial error in any of his answers would avoid the policy, irrespective of his motive, because he warranted their truth; with it, the plaintiffs' right to recover will not be defeated, unless it appears that some one of the answers was consciously incorrect."

4. There was error in charging that "to avoid the policy, then, the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness."

5. There was error in leaving the question of the policy being void on the ground of mis'tatement as to the age of the assured, to depend on the question whether "he knew, or had reason to believe, that the year of his birth, as stated in the answer, did not correctly indicate his age."

6. There was error in charging that if the assured had had consumption or rupture, and the fact was "knowingly mis'tated by him," the plaintiff cannot recover.

84 7. There was error in assuming in the charge, in connection with the question as to Chew's having had consumption, as a positive fact, that Chew had actually been examined by two physicians of the company, (defendants,) in July and September, 1865, when one of the defences was a denial that Chew had ever been examined under the application of September, 1865.

8. There was error in charging, "Under the evidence, it is not probable that Chew knew or believed that he was affected by a disease of the lungs known as consumption. In view of the fact that he survived for years after it is alleged he was so affected, and of the result of his examination by two different physicians of the insurance company in July and September, 1865, the jury will probably infer that such disease, if he had it at all, was not so far developed as to be capable of detection. Even if he had it then, under such circumstances his answer cannot be regarded as untrue, in a sense that would affect the validity of the policy."

9. There was error in charging that "if it appears that the rupture had been completely reduced, so that its effects had entirely passed away, and it had ceased to affect his health or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue, as nearly as he could remember."

10. There was error in declining categorically to answer the points presented by defendants, on the ground that all that was embodied in

them was sufficiently answered as far as necessary in the general charge.

11. There was error in declining to answer specifically defendants' first point: "That if the jury believe that the application for insurance, and the policy in question, though nominally in the name of Andrew J. Chew, for the benefit of Lucetta T. France, were in fact made and taken out by the said Lucetta T. France, for her own benefit, she must show an insurable interest in the life of said Andrew J. Chew before she can recover, and the mere fact that she was his sister did not give her such insurable interest."

12. There was error in declining to answer specifically defendants' second point: "If the jury believe that the premiums for the insurance, and the renewals thereof, were paid by said Lucetta T. France, whether in cash or by her notes, there is evidence from which the jury can find that the application for insurance was made, and the policy in question taken out by said Lucetta T. France for her own benefit."

85 13. There was error in declining to answer specifically defendants' fourth point: "If the jury believe that at the time the application for insurance was made and the policy in question issued Lucetta T. France was a married woman, and in no way dependent upon Andrew J. Chew for her support, either in whole or in part, the mere fact that she was his sister would not give her an insurable interest in his life."

14. There was error in declining to answer specifically defendants' fifth point: "If the jury believe that at the time the application for insurance was made and the policy in question issued Andrew J. Chew was in such circumstances as to preclude any presumption that Lucetta T. France would be in any way dependent upon him for her support, either in whole or part, and she was not, in fact, at the time so dependent upon him, then the mere fact that she was his sister would not give her an insurable interest in his life."

15. There was error in declining to answer specifically defendants' sixth point: "Unless it affirmatively appear from the evidence that Andrew J. Chew, at the time the application was made and the policy issued, was in such circumstances as to induce a reasonable probability that upon his dying intestate Lucetta T. France might, as one of his next of kin, receive a portion of his estate, the mere fact of her being one of such next of kin would not give her an insurable interest in his life."

16. There was error in declining to answer specifically defendants' seventh point: "If at the time the application was made, and the policy issued, Lucetta T. France was a married woman, she must in order to have had any insurable interest in the life of Andrew J. Chew as a creditor, and to recover as such upon the policy, show affirmatively and positively that any monies alleged to have been loaned to him and in respect of which she claims to have been his creditor, were the monies of her separate estate; and there is no evidence in this case from which, under the law, the jury can find that any monies alleged to have been loaned to Andrew J. Chew by Mrs. France were the monies of her separate estate."

86 17. There was error in declining to answer specifically defendants' eighth point: "If at the time the application in the present case was made, and the policy issued thereon, Lucetta T. France already had a policy in full force of $10,000 on the life of Andrew J. Chew in the company defendants, then the creation or existence of an indebtedness by him to her subsequently to such prior policy, and not exceeding the sum thereby insured, could not give her an insurable interest in his life as a creditor in respect to the present policy."

18. There was error in declining to answer specifically defendants'

thirteenth point: "If the jury believe that Andrew J. Chew, at the time the application was made, was materially older than thirty years, the age stated in the application, the policy is void, and a difference in age of four to seven years is material."

19. There was error in declining to answer specifically defendants' fourteenth point: "That the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' are not to be taken as giving an entirely indefinite limit to the answers in the application, but must be taken as meaning, in respect to age, about the age and date of birth stated."

20. There was error in declining to answer specifically defendants' seventeenth point: "If at the time when the application for insurance was made and the policy issued Andrew J. Chew was or had been ruptured, he was bound, in answer to question No. 11, to state the fact, and also how long and to what extent; and if the jury believe that at the time mentioned he was or had been ruptured, his answer, 'None,' to said question No. 11, was untrue and false, and the verdict must be for the defendants."

21. There was error in declining to answer specifically defendants' twentieth point: "If at the time the application for insurance was made and the policy issued A. J. Chew had had at any time during the last preceeding seven years 'any severe disease' of any kind, he was bound, in answer to question 13, to state the fact, and the particulars, and the name of the attending physician; and if the jury believe that at the time mentioned he had had at any time during the last preceding seven years 'any severe disease' of any kind, and had been attended by a physician, his answer 'No' to said question 13 was untrue and false, and the verdict must be for the defendants."

87 22. There was error in declining to answer specifically defendants' twenty-first point: "If at the time the application for insurance was made and the policy issued A. J. Chew was ruptured or consumptive, or had habitual cough, or was 'afflicted with any disease or disorder' of any kind, he was bound in answer to question No. 14 to state the fact, 'and what the disease or disorder was;' and if the jury believe that at the time mentioned he was ruptured or consumptive, or had habitual cough, or was afflicted with any 'disease or disorder' of any kind, his answer 'No' to said question No. 14 was untrue and false, and the verdict must be for defendants."

23. There was error in declining to answer specifically defendants' twenty-third point: "It is not necessary in order that a material misrepresentation shall render the policy void that the death should have occurred from a cause connected with the fact misrepresented."

24. There was error in declining to answer specifically defendants' twenty-fourth point: "That the fact that in the application of July 12, 1865, to the defendants for an insurance on the same life, the answers to the questions were absolute and without any qualification whatever, might reasonably lead the defendants to presume that the use in the answers to the questions in the second application of the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' did not mean that the applicant had no knowledge on the subjects inquired of, but that he considered the answers nearly correct, without meaning to bind himself to strict accuracy."

25. There was error in declining to answer specifically defendants' twenty-fifth point: "That if the jury believe that upon the application of September 13, 1865, the said A. J. Chew suppressed any fact in regard to his health, the policy is void, and the verdict must be for defendants."

88 And inasmuch as the said charge so excepted to does not appear upon the record, the counsel for the defendants did then and there tender this bill of exception to the charge of the court, and requested the seal of the judge aforesaid should be put to the same according to the form of the statute in such case made and provided; which request is granted, and this bill of exceptions sealed accordingly.

NOTE.—Verdict for plaintiffs, $10,950.

On a motion for a new trial, the judge thought that the amount of the premium-notes outstanding should have been deducted. Plaintiffs' counsel thereupon filed a remittitur for $476, leaving the verdict stand for $10,474.

W. MCKENNAN, [L. S.]
*Cir. Judge.*

89 A.

*Participating policy No.* 12796.

ÆTNA LIFE-INSURANCE COMPANY, HARTFORD, CONNECTICUT.

This policy of insurance witnesseth that the Ætna Life-Insurance Company, in consideration of the sum of two hundred forty-three dollars an' fifty cents, to them in hand paid by Andrew J. Chew, for the benefit of Lucetta P. France, his sister, and of the annual premium of two hundred forty-three dollars and fifty cents to be paid to said company on or before the thirteenth day of September in every year during the continuance of this policy, do assure the life of Andrew J. Chew, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, in the amount of ten thousand dollars for the term of his life.

Annual premium $243.50.

Note for one-half each year.

Term—life.

And the said company do hereby promise and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay, or cause to be paid, the said sum insured, to the said assured, her executors, administrators, or assigns, within ninety days after due notice and proof of the death of the said Andrew J. Chew, and in either case all indebtedness of the party to the company shall be deducted from the sum insured. If any notes given by the said Andrew J. Chew for any portion of the cash part of premium on the within policy for any current year shall mature and not be paid, the policy shall become void from that date, and all payments of premium thereon forfeited to said company.

Sum insured, $10,000.

All premiums received on this policy (less commissions paid agent) are to be returned if said Chew volunteers or is drafted into the service of the Army of the United States during the present war and dies in consequence thereof. If disabled, the company shall revive the policy or return as above. If in good health when through service the policy shall be revived upon the payment of premiums in arrear with interest, without extra charge.

90 Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Andrew J. Chew shall die upon the seas, or shall, without the consent of this company previously obtained and endorsed upon this policy, pass beyond the settled limits of the United States, (excepting into the settled limits of the British provinces of the two Canadas, Nova Scotia, or New Brunswick,) or shall, without such previous consent thus endorsed, visit

those parts of the United States which lie south of the thirty-sixth degree of north latitude, between the first of June and the first of November, or shall, without such previous consent thus endorsed, pass to or west of the Rocky Mountains, or shall, without such previous consent thus endorsed, enter into any military or naval service whatsoever, (the militia not in actual service excepted,) or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as conductor or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder, or in case he shall become so far intemperate as to impair his health seriously and permanently, or induce delirium tremens, or shall die by his own hand, or in a duel, or in consequence thereof, or by the hands of justice, or in the known violation of any law of the States or of the United States, or of any government where he may be, this policy shall be void, null, and of no effect.

And it is also understood and agreed to be the true intent and meaning hereof that if the proposal, answers, and declaration made by the said Andrew J. Chew, and bearing date the thirteenth day of September, 1865, and which are hereby made part and parcel of this
91 policy as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect false or fraudulent, then and in such case this policy shall be null and void; or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured, or any part thereof; and this policy shall cease and determine.

And it is further agreed that in every case where this policy shall cease or be or become void, all payments made thereon shall be forfeited to the said company; and also all profits and dividend credits accruing therefrom.

In witness whereof the said Ætna Life-Insurance Company have, by their president and secretary, signed and executed this contract in the city of Hartford this thirteenth day of September, 1865, but the same shall not be valid until countersigned by C. H. Brush, agent at Philadelphia.

E. A. BULKELY,
*President.*

P. O. ENDERS, *Secretary.*

Countersigned at Philadelphia this eighteenth day of September, 1865.

C. H. BRUSH, *Agent.*

[U. S. int.-rev. stamp, $1.00.]

92 B.

ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CONN.

*Assets, Jan. 1st*, 1866, $2,036,823.05.

HARTFORD, *Sep.* 13, 1866.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, premium due Sept. 13th, 1866, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13' day of September, 1867, at noon.

Not binding until countersigned by C. H. Brush, agent, at Philadelphia.

Premium, $243.50.

P. O. ENDERS, *Secretary.*

C. H. BRUSH, *Agent.*

[2-cent int.-rev. st.]

ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CONN.

*Assets, Jan. 1st,* 1867, $4,401,833.86.

HARTFORD, *Sep.* 13, 1867.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, premium due Sep. 13, 1867, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13 day of September, 1868, at noon.

Not binding until countersigned by C. H. Brush, agent, at Philad'a.

Premium, $243.50.

P. O. ENDERS, *Secretary.*

C. H. BRUSH, *Agent.*

[2-ct. int.-rev. stp.]

93 ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CT.

*Assets, Jan. 1st,* 1868, $7,538,612.35.

HARTFORD, *Sep.* 13, 1868.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, premium due Sep. 13, 1868, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13th day of September, 1869, at noon.

Not binding until countersigned by C. H. Brush, agent, at Philad'a.

Premium, $243.50.

P. O. ENDERS, *Secretary.*

C. H. BRUSH, *Agent.*

[2-cent int.-rev. st.]

ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CT.

*Assets, Jan. 1st,* 1869, $10,350,512.23.

HARTFORD, *September* 13, 1869.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, premium due Septem'r 13, 1869, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13 day of September, 1870, at noon.

Not binding until countersigned by C. H. Brush, agent, at Philad'a.

Premium, $243.50.

P. O. ENDERS, *Secretary.*

C. H. BRUSH, *Agent.*

[2-cent int -rev. stp.]

94 ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

*Assets, Jan. 1st,* 1870, $13,584,564.21.

HARTFORD, 13 *September,* 1870.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, pre-

mium due 13 September, 1870, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13 day of September, 1871, at noon.

Not binding until countersigned by C. H. Brush, agent, at Philad'a. Premium, $243.50.

P. O. ENDERS, *Secr.*

C. H. BRUSH, *Agent, Phila.*

[2-ct. stamp, int. rev.]

ÆTNA LIFE-INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

HARTFORD, *September* 13, 1871.

Received from A. J. Chew two hundred forty-three $\frac{50}{100}$ dollars, premium due September 13, 1871, on policy No. 12796, insuring $10,000 for 12 months, ending on the 13 day of September, 1872, at noon.

Not binding until countersigned by C. H. Brush, agent, at Phila. Premium, $243.50.

P. O. ENDERS, *Secy.*

C. H. BRUSH, *Agent, Phila.*

95 C.

PHILADELPHIA BRANCH ÆTNA LIFE-INSURANCE CO., HARTFORD, CONN.
*Chauncey H. Brush, Manager.*

| Questions to be answered by the party applying for insurance. | Answers |
|---|---|
| 1. Name and residence of the person for whose benefit the assurance is proposed, and—<br>Relationship to the party whose life is to be insured.<br>☞Give Christian name in full. | Lucetta P. France.<br>Sister of— |
| 2. Name, residence, and occupation of the person whose life is proposed to be insured. | Andrew J. Chew, 791 South 2nd street. |
| 3. What have been the former occupations of the party? | Shoe-manufacturer. |
| 4. Place and date of birth of the party whose life is to be insured. | Born New Jersey, in 1835. |
| 5. Age next birthday. | Thirty years, October 28, as near as I can recollect. |
| 6. Is the party married? | No. |
| 7. Are the habits of the party sober and temperate? Are they active or sedentary? | Active. |
| 8. Has the party resided out of the United States, or in southern climates; and, if so, when, and for what period, and what was the state of health during the time? | No. |
| 9. Has the party been or is he employed in Army or Navy? | No. |
| 10. Has the party been vaccinated or had the small-pox or varioloid? | Yes. |
| 11. Has the party ever had any of the following diseases; if so, how long, and to what extent? Palsy, spitting of blood, consumption, asthma, bronchitis, diseases of the lungs, gout, affection of the brain, dropsy, epilepsy, rupture, convulsions, disease of heart, insanity, fistula, fits, palpitation, yellow fever, apoplexy, paralysis. | None. |
| 96 12. Is the party subject to habitual cough, dyspepsia, diarrhœa, dysentery, rheumatism, cholic? | No. |
| 13. Has the party had, during the last seven years, any severe disease? If so, state the particulars and the name of the attending physician. | No. |
| 14. Is the party now afflicted with any disease and disorder, and what? | No. |
| 15. Has the party ever met with any severe personal injury; if so, of what nature? | No. |
| 16. Are the parents of the party living? If so, what is their age, respectively, and state of their health? If dead, about how old at their death and cause of death? | Mother is dead & father left; don't know whether living or not. Mother was 52 years when she died with the tyfoid fever. |
| 17. How many children have the parents of the party had? | Four. |
| 18. How many are living and the state of their health? | Three; one may be living; left home & got no account from him. |
| 19. How many are dead, at about what age did they die, and what was the cause of their death? | All three in good health. |
| 20. Name and residence of an intimate friend, to be referred to for information as to habits of the party? | Jacob Haiser, No. 1514 South 2nd street. |
| 21. Has proposal been made for insurance in any other office; and, if so, was it accepted? | Yes; and was accepted in this office. |
| 22. Is the party aware that any false or fraudulent allegation made in effecting the proposed assurance will render the policy void, and that all payments of premium made thereon will be forfeited? | Yes. |
| 23. Amount to be insured? | Ten thousand dollars. |
| 24. Term for which assurance is required. | |
| 25. Kind of policy desired? | Partisapating policy. |
| 26. Amount of premium, and how payable? | 243.50 dollars. |

The above is as near correct as I remember.

It is hereby declared that the above are correct and true answers to the foregoing questions, and it is understood and agreed by the undersigned that the above statements shall form the basis of the con-
97 tract for insurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due, shall render the policy null and void, and forfeit all payments made thereon; also, that the policy of insurance hereby applied for shall not be binding upon this company until the amount of premium as stated therein shall be received by said company or some authorized agent thereof, during the life-time of the party therein insured.

Dated at Philadelphia the 13th day of September, 1865.

(Signed) LEUSETTA P. FRANCE.
ANDREW J. CHEW.

Witness present:
JOHN SCOTT.

98 D.

*Mr. Andrew J. Chew, examined at* 1742 *S. 2nd st., the 13th day of September*, 1865.

| | |
|---|---|
| 1. Height, figure, weight, number of inches around the chest; temperament and habits of life. | Ht. 5 ft. 9½ inches; figure medium; w't, 138 lbs.; chest-measure, 35 inches; bilious, regular, active. |
| 2. Whether any residence in southern, western, or foreign climates; and, if so, what effect was produced on the constitution and health? | 2. Has resided both South and West; health improved thereby. |
| 3. Whether any signs of apoplexy, epilepsy, insanity, or any other nervous affection, or of predisposition to them? | 3. No. |
| 4. Whether paralysis, tremors, or cramps in any part of the system; gout, aneurism, rupture, tumors, or disease of the kidney or bladder? | 4. No. |
| 5. What is the stethoscopic character of respiration? Is it full, gentle, and regular? | 5. Full, gentle, regular. Yes. |
| Is the inspiratory murmur healthy, and clearly audible over both lungs? | Yes. |
| 6. Rate and other qualities of the pulse? Number of respirations per minute? Does percussion or auscultation indicate disease in any part of the viscera of the chest? | 6. 68 beats per minute; soft.<br>18 respiration' "<br>No. |
| 7. Is the party subject to cough, expectoration, difficulty of breathing, or palpitation? | 7. No. |

| | |
|---|---|
| 8. What is the stethoscopic character of the heart's action? Is it uniform and free, or is it irregular and violent, with unsteady rhyth? | 8. Uniform and free; steady. |
| 9. Does auscultation indicate enlargement, ossification, or disease of the heart of any kind? | 9. No. |
| 99 10. Are the abdominal and urinary organs in healthy condition? | 10. Yes. |
| 11. Has the party ever suffered from mechanical injury, or disease of any kind? | 11. No. |
| 12. Are the party's parents living? and, if not, of what disease did they die, and at what age? | 12. Father left home years ago, & his present condition is unknown. Mother died aged 52; typhoid fever. |
| 13. Are there any hereditary diseases in the family? | 13. No. |
| 14. State the prospect of longevity. | 14. Good. |
| 15. Do you consider the party safely insurable, and do you recommend the company to grant policy? | 15. Yes; recommended. |

(Signed) CHAS. P. TURNER,
*Examining Physician.*

100 E, No. 1.

*Physician's certificate of death for the Ætna Life-Insurance Company.*

STATE OF PENNSYLVANIA,
*County of Philadelphia:*

Edward F. Guth, M. D., of Philad'a, being duly sworn, deposes and says that he is a physician by profession; that as such he attended Mr. Andrew Jackson Chew, of Philad'a, in his last illness; that he was called upon to attend on or about the 27th day of February, and continued with him as such until the time of his death, viz, on the 25th day of May, A. D. 1872; that the death of said Andrew Jackson Chew was not occasioned by his own hands, by duelling, by the hands of justice, or by the effects of intemperance; and that the following answers to the proposed questions give all the essential facts relating to his last illness:

1. What was the direct cause of death?—Pulmonary consumption.
2. What was the indirect cause of death?
3. Was his last illness occasioned, or had his general health been impaired, by any pernicious habits?—No.
4. Was there a post-mortem examination? If so, state the particulars.—No.
5. Was any physician associated with you, or had any other physician been employed, in the management of the case? If so, state who.—No.
6. Was there anything remarkable, or such as this office should be made acquainted with, developed by the history, progress, or treatment of the case? If so, state the particulars in full. Nothing but has in ordinary consumption.

EDWARD F. GUTH.

☞ The medical attendant will please be as explicit as possible in stating the cause of death; e. g., if heart disease, state whether valvular, hypertrophy, fatty degeneration, &c., and so with other diseases.

Subscribed and sworn to before me this eleventh day of June, 1872.
[NOTARIAL SEAL.] ALEX'R THACKARA,
[SEAL.] *Notary Public.*

101 E, No. 2.

No. 1.

*Identity of party.*

STATE OF PENN.,
*County of Pa., ss:*

John Dunn, of Philad'a, being duly sworn, deposes and says that he was personally acquainted with Mr. Andrew Jackson Chew, of Philad'a, now deceased, and that the said Andrew Jackson Chew was the identical person whose life was insured in the Ætna Life-Insurance Company under policy No.* , bearing date the day of , A. D. 18 , and who was therein described as Mr. of .

JOHN DUNN.

Subscribed and sworn to before me this eleventh day of June, A. D. 1872.
[NOTARY'S SEAL.] ALEX'R THACKARA,
*Notary Public.*

*Please be careful to give the right number.

102 E, No. 3.

No. 2.

*Proof from or undertaker.*

STATE OF PENN.,
*County of Pa., ss:*

John S. Kennelly, being duly sworn, deposes and says that he is the sexton of 235 Queen st., Philadelphia; that as such sexton he was called upon on the 27th day of May last to prepare the dead body of Andrew Jackson Chew for burial; that he placed said body in a coffin, and duly closed and fastened the lid, and that he placed said coffin containing the said body in a vault in *in* Union , and that the said coffin was left by deponent in said ground.

JOHN S. KENNELLY.

Subscribed and sworn to before me this eleventh day of June, A. D. 1872.
[NOTARY'S SEAL.] ALEX'R THACKARA,
*Notary Public.*

102 E, No. 4.

No. 3.

*Proof from minister or other party who officiated at the interment of the deceased.*

STATE OF PENN.,
*County of Pa., ss:*

Chas. M. Leisenring, being duly sworn, deposes and says that he is a past sachem of Idaho tribe of Red Men, No. 73, and that he was personally acquainted with Mr. Andrew Jackson Chew, of Philad'a, in his lifetime, now deceased, and that said Andrew Jackson Chew was interred in the burial ground of the Union ground on the 29th day of May, A. D. 1872, and that he as marshall officiated at such interment, there being no officiating clergyman present.

CHAS. M. LEISENRING.

Subscribed and sworn to before me this eleventh day of June, A. D. 1872.

[NOTARIAL SEAL.] ALEX'R THACKARA,
*Notary Public.*

E, No. 5.

No. 4.

*Proof of age of party.**

PHIL'A, PA.

Mrs. Mary Chew, the wife of Andrew Jackson Chew, late of Philad'a, deceased, being duly sworn, deposes and says that Andrew Jackson Chew was born 3 miles below Woodbury, New Jersey, on the 28th day of October, A. D. 1828, and that the said Andrew Jackson Chew was consequently on the 25th of May, 1872, (the date of his decease,) 43 years and six months and 27 days old.

MARY CHEW.

Subscribed and sworn to before me this eleventh day of June, A. D. 1872.

[NOTARY'S SEAL.] ALEX'R THACKARA,
*Notary Public.*

☞ *This affidavit may be made by a relation of the party. In all cases the fullest and most satisfactory evidence as to the age of the person insured must be furnished, in order to make the proof of claim complete.

103 E, No. 6.

No. 6.

*Proof required from party who has insured the life of another person.*

STATE OF PENNSYLVANIA,
*County of Philadelphia, ss:*

Mrs. Lucetta T. France, being duly sworn, deposes and says that she is the same person for whose benefit was effected an insurance on the life of Andrew Jackson Chew in the Ætna Life Insurance Company of Hartford, Conn't, on the 12th day of July, A. D. 1865, under policy No. 11,211, and on the 13th day of September, A. D. 1865, under policy No. 12,796.

Deponent further says that she had an insurable interest in the life of Andrew Jackson Chew to the amount of $20,000, and that the same was not created by reason of any gambling or other illegal transaction, nor was the effecting of said insurance a mere gambling or speculating transaction. But the said Andrew Jackson Chew was indebted to me as follows, as his sister, and also for moneys loaned and advanced to him.

LUCETTA T. FRANCE.

Subscribed and sworn to before me this twelfth day of June, A. D. 1874.

[NOTARY'S SEAL.] ALEX'R THACKARA,
*Notary Public.*

☞ Where the policy was made for the benefit of the wife, it is absolutely required that she should fill out this certificate, and state that her husband was indebted to her "as his true and lawful wife," or "she being his true and lawful wife."

104 E, No. 7.

No. 7.

*Proof required as to the movements of party while insured by the company.*

STATE OF PENNSYLVANIA,
*County of Philadelphia, ss:*

Mrs. Lucetta T. France, of Philadelphia, being duly sworn, deposes and says, that she was personally acquainted with Andrew Jackson Chew, late of Philadelphia, deceased; that from the twelfth day of July, A. D. 1865, (the day the insurance was effected,) up to the 25th day of May, A. D. 1872, (the date of his decease,) the said Andrew Jackson Chew was not absent from the State of Pennsylvania, to the best of deponent's knowledge, information, or belief, except upon the occasion of a few short visits to Cape May, in New Jersey, and to New York City.

LUCETTA T. FRANCE.

Subscribed and sworn to before me this twelfth day of June, A. D. 1872.

[NOTARIAL SEAL.] ALEX'R THACKARA,
*Notary Public.*

☞ If the party has been absent, state when, where, and how often, with every particular the party is possessed of.

105 F[1].

*Participating policy No.* 11211.

ÆTNA LIFE-INSURANCE COMPANY, HARTFORD, CONNECTICUT.

Annual premium $243.50.

This policy of insurance witnesseth that the Ætna Life Insurance Company, in consideration of the sum of two hundred forty-three dollars and fifty cents to them in hand paid by Andrew J. Chew for the benefit of Lunetta P. France, his sister, and of the annual premium of two hundred forty-three dollars and fifty cents to be paid to said company on or before the twelfth day of July in every year during the continuance of this policy, do assure the life of Andrew J. Chew, of Philadelphia, in the county of Philadelphia, State of Pennsylvania, in the amount of ten thousand dollars for the term of life.

Note for one-half each year.

Term—life.

And the said company do hereby promise and agree to and with the said assured, her executors, administrators, and assigns, well and truly to pay or cause to be paid the said sum insured to the said assured, her

executors, administrators, or assigns, within ninety days after due notice and proof of the death of the said Andrew J. Chew, and in either case all indebtedness of the party to the company shall be deducted from the sum insured. If any notes given by the said Andrew J. Chew for any portion of the cash part of premium on the within policy for any current year shall mature and not be paid, the policy shall become void from that date, and all payments of premium thereon forfeited to said company.

Sum insured, $10,000.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these express conditions, that in case the said Andrew J. Chew shall die upon the seas, or shall, without the consent of this company previously obtained and endorsed upon this policy, pass beyond the settled limits of the United States, (excepting into the settled limits of the British Provinces of the two Canadas, Nova Scotia, or New Brunswick,)
106 or shall, without such previous consent thus endorsed, visit those parts of the United States which lie south of the thirty-sixth degree of north latitude between the first of June and the first of November, or shall, without such previous consent thus endorsed, pass to or west of the Rocky Mountains, or shall, without such previous consent thus endorsed, enter into any military or naval service whatsoever, (the militia not in actual service excepted,) or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in charge of a steam-engine, or as conductor or brakeman upon a railroad, or as an officer, hand, or servant of any steam-vessel, or in the manufacture or transportation of gunpowder, or in case he shall become so far intemperate as to impair his health seriously and permanently, or induce delirium tremens, or shall die by his own hand, or in a duel, or in consequence thereof, or by the hands of justice, or in the known violation of any law of the States or of the United States, or of any government where he may be, this policy shall be void, null, and of no effect.

And it is also understood and agreed to be the true intent and meaning hereof, that if the proposal, answers, and declaration made by the said Andrew J. Chew, and bearing date the twelfth day of July, 1865, and which are hereby made part and parcel of this policy, as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect false or fraudulent, then and in such case this policy shall be null and void; or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured, or any part thereof; and this policy shall cease and determine.

And it is further agreed, that in every case where this policy
107 shall cease or be or become void, all payments made thereon shall be forfeited to the said company—and also all profits and dividend credits accruing therefrom.

In witness whereof, the said Ætna Life-Insurance Company have, by their president and secretary, signed and executed this contract, in the city of Hartford, this twelfth day of July, 1865, but the same shall not be valid until countersigned by C. H. Brush, agent at Philadelphia.

E. A. BULKELEY, *President.*
P. O. ENDERS, *Secretary.*

Countersigned at Philadelphia, this seventeenth day of July, 1865.

C. H. BRUSH, *Agent.*

[One dollar internal-revenue stamp.]

108 F².

PHILADELPHIA BRANCH ÆTNA LIFE-INSURANCE COMPANY, HARTFORD, CONNECTICUT.

*Chauncey H. Brush, manager.*

| ☞ Questions to be answered by the party applying for insurance. | Answers. |
|---|---|
| 1. Name and residence of the person for whose benefit the assurance is proposed, and relationship to the party whose life is to be insured. ☞ Give Christian name in full. | 1. Lucetta P. France, No. 1742 South 2nd street. Sister of. |
| 2. Name, residence, and occupation of the person whose life is proposed to be insured. | 2. Andrew J. Chew, No. 924 S. 2nd street. |
| 3. What have been the former occupations of the party? | 3. Shoe merchant. |
| 4. Place and date of birth of the party whose life is to be insured. | 4. Born in 1835, Oct. 28th, Gloster Co., N. Jersey. |
| 5. Age next birthday. | 5. 30 years. |
| 6. Is the party married? | 6. No. |
| 7. Are the habits of the party sober and temperate? Are they active or sedentary? | 7. Yes. Active. |
| 8. Has the party resided out of the United States, or in southern climates; and if so, when and for what period, and what was the state of health during time? | 8. No. |
| 9. Has the party been or is he employed in the Army or Navy? | 9. No. |
| 10. Has the party been vaccinated, or had the small-pox or the varioloid? | 10. Was vaccinated. |
| 11. Has the party ever had any of the following diseases? If so, how long, and to what extent? Palsy, spitting of blood, consumption, asthma, bronchitis, diseases of the lungs, gout, affection of the brain, dropsy, epilepsy, rupture, convulsions, disease of the heart, insanity, fistula, fits, palpitation, yellow fever, apoplexy, paralysis. | 11. None. |
| 109 12. Is the party subject to habitual cough, dyspepsia, diarrhœa, dysentary, rheumatism, cholic? | 12. No. |
| 13. Has the party had during the last seven years any severe disease? If so, state the particulars and the name of the attending physician. | 13. No. |
| 14. Is the party now afflicted with any disease and disorder, and what? | 14. No. |
| 15. Has the party ever met with any severe personal injury? If so, of what nature? | 15. No. |
| 16. Are the parents of the party living? If so, what is their age respectively, and state of their health? If dead, about how old at their death, and cause of death? | 16. No; don't know father's age or of what disease he died with. Mother died in her 52 year, of the tyfoid fever. |
| 17. How many children have the parents of the party had? | 17. 4. |
| 18. How many are living and the state of their health? | 18. 3; in good health. |
| 19. How many are dead, at about what age did they die, and what was the cause of their death? | 19. One supposed de'd; left home 4 years ago and did not hear from him since. |
| 20. Name and residence of an intimate friend, to be referred to for information as to habits of the party. | 20. Jacob Hauser, No. 1517 S. 2nd st. |
| 21. Has a proposal been made for insurance in any other office; and if so, was it accepted? | 21. No. |
| 22. Is the party aware that any false or fraudulent allegation, made in affecting the proposed assurance, will render the policy void, and that all payments of premium made thereon will be forfeited? | 22. Yes. |
| 23. Amount to be insured. | 23. $10,000 dollars. |
| 24. Term for which assurance is required. | 24. For life. |
| 25. Kind of policy desired. | 25. Partisapating. |
| 26. Amount of premium and how payable. | 26. $243.50, paid an'u'ly. |

110 It is hereby declared that the above are correct and true answers to the foregoing questions, and it is understood and agreed by the undersigned that the above statements shall form the basis of the contract for insurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the premium on or before the day it becomes due, shall render the policy null and void and forfeit all payments made thereon; also, that the policy of insurance hereby applied for shall not be binding upon this company until the amount of premium as stated thereon shall be received by said company, or some authorized agent thereof, during the life-time of the party therein insured.

Dated at Philad'a the 12th day of July, 1865.

(Signed) LUSETTA P. FRANCE.
ANDREW J. CHEW.

Witness present:
JOHN SCOTT.

111 F[3].

*Mr. Andrew J. Chew, examined twelfth day of July*, 1865.

| | |
|---|---|
| 1. Height, figure, weight, number of inches around the chest, temperament, and habits of life. | 5 ft. 9½; 137 lbs; 35 inches; regular; tobacco, moderately. |
| 2. Whether any residence in southern, western, or foreign climate; and, if so, what effect was produced on the constitution and health? | Resided South & West. Health improved fully. |
| 3. Whether any signs of apoplexy, epilepsy, insanity, or any other nervous affection, or of predisposition to them? | No predisposition. |
| 4. Whether paralysis, tremors, or cramps, in any part of the system; gout, aneurism, rupture, tumors, dropsy, or disease of the kidney or bladder? | None. |
| 5. What is the stethoscopic character of respiration? Is it full, gentle, and regular? Is the inspiratory murmur healthy and clearly audible over both lungs? | Regular, full, natural, clear, & healthy. |
| 6. Rate and other qualities of the pulse? Number of respirations per minute? | 70; 17; regular; not very strong. |
| Does percussion or auscultation indicate disease in any part of the viscera of the chest? | None of any kind. |
| 112 7. Is the party subject to cough, expectoration, difficulty of breathing, or palpitation? | Never. |
| 8. What is the stethoscopic character of the heart's action? | |

| | | |
|---|---|---|
| | Is it uniform and free, or is it irregular and violent, with unsteady rhyth? | Uniform, free; rhyth steady. |
| 9. | Does auscultation indicate enlargement, ossification, or disease of the heart of any kind? | No disease. |
| 10. | Are the abdominal and urinary organs in healthy condition? | Perfectly so. |
| 11. | Has the party ever suffered from mechanical injury, or disease of any kind? | Nothing but bilious fever. |
| 12. | Are the party's parents living; and if not, of what disease did they die, and at what age? | Father unknown. Mother 52; typhoid fever. |
| 13. | Are there any hereditary diseases in the family? | None known. |
| 14. | State the prospect of longevity. | Fair. |
| 15. | Do you consider the party safely insurable, and do you recommend company to grant policy? | Safely insurable, and so recommended. |

(Signed) WM. B. ATKINSON,
*Examining Physician.*

Examined at 1517 S. 2nd, twelfth day of July, 1865.

113 G[1].

$153.55. PHILAD'A, *Sept. 13th*, 1869.

Ætna Life-Insurance Company premium note.

Twelve months after date, for value received, I promise to pay to the Ætna Life-Insurance Company, or order, one hundred & fifty-three $\frac{55}{100}$ dollars, being for part premiums due and payable on policy No. 12796 of said company, on the life of Andrew J. Chew, dated September 13th, 1866, which policy, and all payments or profits which may become due thereon, are hereby pledged and hypothecated to said company for the payment of this note.

This note is not assessable.

MRS. L. T. FRANCE.

G[2].

$159.52. PHILAD'A, *Sept. 13th*, 1870.

Ætna Life-Insurance Company premium note.

Twelve months after date, for value received, I promise to pay to the Ætna Life-Insurance Company, or order, one hundred and fifty-nine $\frac{52}{100}$ dollars, being for part premiums due and payable on policy No. 12796 of said company, on the life of A. J. Chew, dated September 13th, 1865, which policy and all payments or profits which may become due thereon, are hereby pledged and hypothecated to said company for the payment of this note.

This note is not assessable.

LUCETTA T. FRANCE.

G³.

$121.75. PHILAD'A, *Sept. 13th*, 1871.

Ætna Life-Insurance Company premium note.

Twelve months after date, for value received, I promise to pay to the Ætna Life-Insurance Company, or order, one hundred & twenty-one $\frac{75}{100}$ dollars, being for part premiums due and payable on policy No 12796 of said company on the life of A. J. Chew, dated September 13th, 1865, which policy and all payments or profits which may become due thereon, are hereby pledged and hypothecated to said company for the payment of this note.

This note is not assessable.

MRS. L. P. FRANCE.

114 In the circuit court of the United States for the eastern district of Pennsylvania.

DAVID FRANCE AND LUCETTA T. FRANCE, HIS wife, in right of said Lucetta T. and to her use, *v.* THE ÆTNA LIFE-INSURANCE COMPANY OF Hartford, Connecticut. } October sessions, 1872. No. 7.

Sur writ of error on the part of defendants.

*Assignments of error.*

1. Because the learned judge erred in overruling the offer in evidence by defendants of a policy of insurance, No. 11211, made and executed by the defendants under the hand of their president, attested by their secretary, dated Hartford, Conn., July 12th, 1865, and countersigned by C. H. Brush, the manager of defendants at Philadelphia, July 17th, 1865, for $10,000 for the term of the life of Andrew J. Chew, for the benefit of Mrs. Lucetta T. France, and in the same form as the one sued on, (copy annexed, marked "F") as irrelevant.

2. Because the learned judge erred in permitting the witness, Dr. Richard J. Levis, to be asked the question: "Does or does not the existence of a reducible rupture in a subject of life insurance, in your opinion, appreciably increase the risk of the underwriters?" the same having been objected to by defendants as incompetent and irrelevant under the terms of the policy sued on.

115 3. Because the learned judge erred in charging the jury, "That it would be manifestly unjust to release from his contract a party who assumed its obligations with a full knowledge of its import and accepted the stipulated consideration," as there was no evidence in the case to show that defendants "assumed the obligations" of the policy in question with any knowledge in this respect, (the alleged interest of the party for whose benefit the life of Chew was insured,) beyond the mere fact of Mrs. France being Chew's sister; and the instruction was calculated to mislead the jury.

4. In charging that, "Under the circumstances shown here, Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee; this was a sufficient substantial interest to support the policy."

5. In charging, "But the answers here (given by the assured to the questions propounded in the application) are qualified by the words ap-

pended at the foot of the application, 'The above is as near correct as I remember,' which are applicable to all the statements made by the assured. He must be understood, therefore, as stipulating only for the integrity and approximate accuracy of his answers, and not for their absolute verity. Without this qualification, substantial error in any of his answers would avoid the policy, irrespective of his motive, because he warranted their truth; with it, the plaintiffs' right to recover will not be defeated, unless it appears that some one of the answers was consciously incorrect."

6. In charging, "To avoid the policy, then, the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness."

7. In leaving the question of the policy being void on the ground of mis'tatement as to the age of the assured to depend on the question whether "he knew or had reason to believe that the year of his birth, as stated in the answer, did not correctly indicate his age."

116 8. In charging that if the assured had had consumption or rupture, and the fact was "knowingly mis'tated by him," the plaintiff cannot recover.

9. There was error in assuming in the charge, in connection with the question as to Chew's having had consumption, as a positive fact, that Chew had actually been examined by two physicians of the company (defendants) in July and September, 1865, when one of the defences was a denial that Chew had ever been examined under the application of September, 1865.

10. There was error in charging, "Under the evidence, it is not probable that Chew knew or believed that he was affected by a disease of the lungs known as consumption. In view of the fact that he survived for years after it is alleged he was so affected, and of the result of his examination by two different physicians of the insurance company in July and September, 1865, the jury will probably infer that such disease, if he had it at all, was not so far developed as to be capable of detection. Even if he had it then, under such circumstances his answer cannot be regarded as untrue, in a sense that would affect the validity of the policy."

11. There was error in charging that "If it appears that the rupture had been completely reduced, so that its effects had entirely passed away, and it had ceased to affect his health, or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue, as nearly as he could remember."

12. There was error in declining categorically to answer the points presented by defendants, on the ground that all that was embodied in them was sufficiently answered as far as necessary in the general charge.

13. There was error in declining to answer specifically defendants' first point, "That if the jury believe that the application for insurance and the policy in question, though nominally in the name of Andrew J. Chew, for the benefit of Lucetta T. France, were in fact made and taken out by the said Lucetta T. France, for her own benefit, she must show an insurable interest in the life of said Andrew J. Chew before she can recover, and the mere fact that she was his sister did not give her such insurable interest."

14. There was error in declining to answer specifically defendants' second point, "If the jury believe that the premiums for the insurance and the renewals thereof were paid by said Lucetta T. France, whether

in cash or by her notes, there is evidence from which the jury can find that the application for insurance was made and the policy in question taken out by said Lucetta T. France for her own benefit."

117 15. There was error in declining to answer specifically defendants' fourth point, "If the jury believe that at the time the application for insurance was made and the policy in question issued Lucetta T. France was a married woman, and in no way dependent upon Andrew J. Chew for her support, either in whole or in part, the mere fact that she was his sister would not give her an insurable interest in his life."

16. There was error in declining to answer specifically defendants' fifth point, "If the jury believe that at the time the application for insurance was made and the policy in question issued Andrew J. Chew was in such circumstances as to preclude any presumption that Lucetta T. France would be in any way dependent upon him for support, either in whole or part, and she was not in fact at the time so dependent upon him, then the mere fact that she was his sister would not give her an insurable interest in his life."

17. There was error in declining to answer specifically defendants' sixth point, "Unless it affirmatively appear from the evidence that Andrew J. Chew, at the time the application was made and the policy issued, was in such circumstances as to induce a reasonable probability that upon his dying intestate Lucetta T. France might, as one of his next of kin, receive a portion of his estate, the mere fact of her being one of such next of kin would not give her an insurable interest in his life."

18. There was error in declining to answer specifically defendants' seventh point, "If at the time the application was made and the policy issued Lucetta T. France was a married woman, she must, in order to have had an insurable interest in the life of Andrew J. Chew as a creditor, and to recover as such upon the policy, show affirmatively and positively that any monies alleged to have been loaned to him and in respect of which she claims to have been his creditor, were the monies of her separate estate; and there is no evidence in this case from which, under the law, the jury can find that any monies alleged to have been loaned to Andrew J. Chew by Mrs. France were the monies of her separate estate."

19. There was error in declining to answer specifically defendants' eighth point, "If at the time the application in the present case was made and the policy issued thereon, Lucetta T. France already had a policy in full force of $10,000 on the life of Andrew J. Chew in the company defendants, then the creation or existence of an indebtedness by him to her subsequently to such prior policy, and not exceeding the sum thereby insured, could not give her an insurable interest in his life as a creditor in respect to the present policy."

118 20. There was error in declining to answer specifically defendants' thirteenth point, "If the jury believe that Andrew J. Chew, at the time the application was made, was materially older than thirty years, the age stated in the application, the policy is void, and a difference in age of four to seven years is material."

21. There was error in declining to answer specifically defendants' fourteenth point, "That the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' are not to be taken as giving an entirely indefinite limit to the answers in the application, but must be taken as meaning in respect to age, about the age and date of birth stated."

22. There was error in declining to answer specifically defendants' seventeenth point, "If at the time when the application for insurance was made and the policy issued Andrew J. Chew was or had been ruptured, he was bound in answer to question No. 11 to state the fact, and also how long and to what extent; and if the jury believe that at the time mentioned he was or had been ruptured, his answer, 'None,' to said question No. 11, was untrue and false, and the verdict must be for the defendants."

23. There was error in declining to answer specifically defendants' twentieth point, "If at the time the application for insurance was made and the policy issued A. J. Chew had had at any time during the last preceeding seven years 'any severe disease' of any kind, he was bound in answer to question 13 to state the fact and the particulars and the name of the attending physician, and if the jury believe that at the time mentioned he had had at any time during the last preceding seven years 'any severe disease' of any kind, and had been attended by a physician, his answer 'No' to said question 13 was untrue and false, and the verdict must be for the defendants."

24. There was error in declining to answer specifically defendants' twenty-first point, "If at the time the application for insurance was made and the policy issued A. J. Chew was ruptured or consumptive, or had habitual cough, or was 'afflicted with any disease or disorder' of any kind, he was bound in answer to question No. 14 to state the fact, 'and what the disease or disorder was;' and if the jury believe that at the time mentioned he was ruptured or consumptive, or had habitual cough, or was afflicted with any 'disease or disorder' of any kind, his answer 'No' to said question No. 14 was untrue and false, and the verdict must be for defendants."

119 25. There was error in declining to answer specifically defendants' twenty-third point, "It is not necessary in order that a material misrepresentation shall render the policy void that the death should have occurred from a cause connected with the fact misrepresented."

26. There was error in declining to answer specifically defendants' twenty-fourth point, "That the fact that in the application of July 12, 1865, to the defendants for insurance on the same life, the answers to the questions were absolute and without any qualification whatever, might reasonably lead the defendants to presume that the use in the answers to the questions in the second application of the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' did not mean that the applicant had no knowledge on the subjects inquired of, but that he considered the answers nearly correct, without meaning to bind himself to strict accuracy."

27. There was error in declining to answer specifically defendants' twenty-fifth point, "That if the jury believe that upon the application of September 13, 1865, the said A. J. Chew suppressed any fact in regard to his health, the policy is void, and the verdict must be for defendants."

SAM. C. PERKINS,
*Defts.' Atty.*

120 Know all men by these presents that we, Chauncey H. Brush, of No. 1514 Pine street, in the city of Philadelphia, county of Philadelphia, State of Pennsylvania, insurance agent, and Charles P. Lurner, of No. 1506 Walnut street, in said city, doctor of medicine, are held and firmly bound unto David France and Lucetta T. France, his

wife, in right of said Lucetta and to her use, in the full and just sum of twenty-one thousand (21,000) dollars, to be paid to the said David France and Lucetta T. France, his wife, in right of said Lucetta and to her use, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this ninth day of May, anno Domini one thousand eight hundred and seventy-four. Whereas lately, at a circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court to October sessions, 1872, No. 7, between David France and Lucetta T. France, his wife, in right of said Lucetta and to her use, plaintiffs, and the Ætna Life-Insurance Company of Hartford, Connecticut, defendants, and the said Ætna Life-Insurance Company of Hartford, Connecticut, having obtained their writ of error and filed a copy thereof in the clerk's office of the said
121 court to reverse the judgment in the aforesaid suit, and a citation directed to the said David France and Lucetta T. France, his wife, in right of said Lucetta, and to her use, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Ætna Life-Insurance Company of Hartford, Connecticut, shall prosecute their writ of error to effect and answer all damages and costs if they shall fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

CHAUNCEY H. BRUSH. [SEAL.]
CHARLES P. LURNER. [SEAL.]

Sealed and delivered in presence of—
SAMUEL BELL.
W. GRIER HIBLER.

Approved 25th May, 1874.

JOHN CADWALADER,
*Judge.*

122 UNITED STATES,
*Eastern District of Pennsylvania, set:*

To David France and Lucetta T. France, his wife, in right of said Lucetta T. France and to her use:

Whereas by a writ of error issuing out of the Supreme Court of the United States, directed to the judges of the circuit court of the United States, holden in and for the eastern district of Pennsylvania, wherein you the said David France and Lucetta T. France, his wife, in right of said Lucetta T. and to her use, are the defendants in error, and the Ætna Life-Insurance Company of Hartford, Connecticut, are the plaintiffs in error, the said judge is directed to send the record and process of a certain suit, with all things concerning them, so that the same may be had before the judges of the Supreme Court of the United States at a term of said court to be holden on the second Monday of October next, at the city of Washington, in which suit the Ætna Life-Insurance Company of Hartford, Connecticut, are the original defendants, and you, the said David France and Lucetta T. France, his wife, in right of said Lucetta T. and to her use, are the original plaintiffs, in a plea of trespass on the case upon promises, that the record and process aforesaid

being inspected they, the said judges of the Supreme Court of the United States, may cause to be done thereupon what of right ought to be done; and the said Ætna Life-Insurance Company having made an assignment of errors and given good and sufficient security that the plaintiff in error shall well and truly prosecute said writ of error to effect and answer all such costs as upon an affirmance of the judgment of the said circuit court may be adjudged to the defendant in error, you are hereby cited to appear (if you see cause) at the said Supreme Court at the time and place aforesaid, to answer to the said writ of error, and the errors assigned by the said Ætna Life-Insurance Company.

Given under my hand this twenty-third day of May, one thousand eight hundred and seventy-four.

JOHN CADWALADER,
*Judge.*

I accept service of the above citation.

NATHAN H. SHARPLESS,
*Atty. for Defts. in Error.*

123 UNITED STATES,
*Eastern District of Pennsylvania, set:*

The President of the United States to the judge of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting: [SEAL.]

Because that in the record and process, and also in the rendering of judgment in a suit before you between David France & Lucetta T. France, his wife, in right of said Lucetta T., & to her use, plaintiffs, & the Ætna Life-Insurance Company of Hartford, Connecticut, defendants, in a plea of trespass on the case upon promises, a manifest error has intervened to the great damage of the said Ætna Life-Insurance Company, as in their complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the *the* judges of the Supreme Court of the United States at a term of said court to be holden on the second Monday of October next at the city of Washington, that the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, at Philadelphia, this ninth day of May, A. D. one thousand eight hundred and seventy-four, and in ninety-eighth year of the Independence of the said United States.

SAMUEL BELL,
*Clerk U. S. Cir. Ct., E. D. of Pa.*

Allowed.

JOHN CADWALADER, *Judge.*

(Indorsed:) No. 7. October session, 1872. Ætna Life-Ins. Co. v. France & ux. Writ of error.

124 UNITED STATES OF AMERICA,
*Eastern District of Pennsylvania, sct:*

I, Samuel Bell, clerk, do hereby certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending between David France and Lucetta T. France, his wife, and in right of said Lucetta, and to her use, plaintiffs, and the Ætna Life-Insurance Company of Hartford, Connecticut, defendants.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia this eleventh day of November, A. D. 1874, and in the ninety-ninth year of the Independence of the said United States.

[SEAL.]

SAMUEL BELL,
*Clerk Cir. Ct. U. S., E. D. of Pa.*

(Indorsement on cover:) No. 234. The Ætna Life-Insurance Company, plaintiff in error, vs. David France & Lucetta T., his wife, in right of said Lucetta T., & to her use. E. Pennsylvania C. C. U. S. Filed 14th November, 1874.

IN THE SUPREME COURT OF THE UNITED STATES.

*No. 234. October Term, 1876.*

THE ÆTNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, *Plaintiffs in Error*,

*v.*

DAVID FRANCE AND LUCETTA T. FRANCE, HIS WIFE, IN RIGHT OF SAID LUCETTA, AND TO HER USE.

Writ of Error to the Circuit Court of the U. S. for the E. D. of Pa.

# BRIEF FOR PLAINTIFFS IN ERROR.

SAMUEL C. PERKINS,
*Of Counsel.*

Press of HENRY B ASHMEAD, 1102 & 1104 Sansom Street, Philadelphia.

*In the Supreme Court of the United States.*

OF OCTOBER TERM, 1876, No. 234.

THE ÆTNA LIFE INSURANCE COMPANY, *Plaintiffs in Error, defendants below,*

*v.*

DAVID FRANCE and LUCETTA T., his wife, in right of said Lucetta T., and to her use, *Defendants in Error, plaintiffs below.*

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# BRIEF FOR PLAINTIFFS IN ERROR.

## I.—STATEMENT OF THE CASE.

Action of assumpsit upon a policy of life insurance not under seal, originally brought in the District Court for the City and County of Philadelphia, by the plaintiff (defendants in error), citizens of Pennsylvania, against the defendants (plaintiffs in error), a corporation and citizens of Connecticut. The action was duly removed to the Circuit Court of the United States for the Eastern District of Pennsylvania. (Record, pp. 1–5.)

The policy, No. 12,796, was dated September 13, 1865, countersigned by the company's agent at Philadelphia, September 18, 1865, for $10,000, upon the life of Andrew J. Chew, for the term of his life, in consideration of $243 50 paid to them by said Chew for the benefit of Lucetta T. France, his sister, and of the

annual premium of a like amount during the continuance of the policy (Record, pp. 34, 35).

The policy, in addition to other matters not material to the present case, contained the following clause (Record, p. 35):

"*And it is also understood and agreed to be the true intent and meaning hereof, that if the proposal, answers, and declaration made by the said Andrew J. Chew, and bearing date the thirteenth day of September*, 1865, *and which are hereby made part and parcel of this policy as fully as if herein recited, and upon the faith of which this agreement is made, shall be found in any respect false or fraudulent, then and in such case this policy shall be null and void.*"

The "proposal" referred to contained *inter alia* the following "answers and declaration" (Record, pp. 38, 39):

PHILADELPHIA BRANCH ÆTNA LIFE INSURANCE CO., HARTFORD, CONN.

CHAUNCEY H. BRUSH, *Manager.*

| *Questions to be answered by the party applying for insurance.* | *Answers.* |
|---|---|
| 4. Place and date of birth of the party whose life is to be insured. | Born in New Jersey in 1835. |
| 5. Age next birthday? | Thirty years, October 28, as near as I can recollect. |
| 11. Has the party ever had any of the following diseases? If so, how long, and to what extent? | None. |

| | |
|---|---|
| Palsy, spitting of blood, consumption, asthma, bronchitis, diseases of the lungs, gout, affection of the brain, dropsy, epilepsy, rupture, convulsions, disease of the heart, insanity, fistula, fits, palpitation, yellow fever, apoplexy, paralysis. | |
| 12. Is the party subject to habitual cough, dyspepsia, diarrhœa, dysentery, rheumatism, colic? | No. |
| 13. Has the party had during the last seven years any severe disease? If so, state the particulars and the name of the attending physician. | No. |
| 14. Is the party now afflicted with any disease and disorder, and what? | No. |
| 22. Is the party aware that any false or fraudulent allegation made in effecting the proposed assurance will render the policy void, and that all payments of premium made thereon will be forfeited? | Yes. |

The above is as near correct as I remember.

*It is hereby declared that the above are correct and true answers to the foregoing questions, and it is understood and agreed by the undersigned that the above statements shall form the basis of the contract for insurance, and also that any untrue or fraudulent answers, any suppression of facts in regard to the party's health, or neglect to pay the pre-*

*mium on or before the day it becomes due, shall render the policy null and void, and forfeit all payments made thereon.*

Dated at Philadelphia, the 13th day of September, 1865.

LEUSETTA P. FRANCE.
ANDREW J. CHEW.

Witness present—
JOHN SCOTT.

The annual premiums had been regularly paid—one-half in note (Record, pp. 22, 35, 36, 37, 47, 48, *orig.*, pp. 68, 92, 93, 94, 113)—up to the time of the death of the life insured, Andrew J. Chew, who died May 25, 1872, of pulmonary consumption. (Record, pp. 23, 40, *orig.*, pp. 69, 100.)

The defences were:

Want of insurable interest, there being no interest alleged or shown except the mere fact of relationship.

That the life insured, Andrew J. Chew, was seven years older than he had declared in his proposal.

That he had been ruptured; that he had had consumption or some disease of the lungs; that he was subject to habitual cough and dyspepsia; that he had been attended by physicians for severe disease within seven years preceding the application; and that all these facts were to his knowledge at the time of the application.

The Declaration (Record, pp. 5–9), after setting out the policy *in hæc verba*, averred the consideration for the promise therein contained; the payment of the annual premiums until the death of the life insured, Andrew J. Chew; the interest of Lucetta T. France therein at the time it was made, during all its continuance, and at the time of Chew's death to the full

amount of the sum insured; the death of Chew; and that due notice and proof of death was furnished to the company. It then negatived specifically all the acts set forth in the policy as making it void; alleged generally that the proposal, answers and declarations made by Chew in his application were not in any respect false or fraudulent; averred that ninety days (the time fixed by the policy) had elapsed, and demand and refusal to pay.

A second count differed from the first in omitting the averment of the interest of Lucetta T. France in the life of Chew; and in respect to the denial of any acts set forth in the policy as making it void, which was put in the general form (Record, p. 9, *orig.*, p. 24) that Chew "did not in his lifetime violate any of the conditions or stipulations of the policy, nor did he die in any of the ways in which it was provided in said policy that the same should thereupon become void and of no effect." This count also omitted the averment that the proposal, &c., were not false or fraudulent.

Common counts were added for money due upon an account stated, for money had and received, and for interest.

The defendants pleaded (Record, pp. 10–13):

(1) Set-off, and as to the common counts (16), *non assumpserunt;* as to the first count (2) that Mrs. France was not interested in the life of Chew, *modo et forma;* as to the second count (15) that at the time of the making of the policy or at any time afterwards, Mrs. France had not an interest in the life of Chew to support the policy; and as to the first and second counts, twelve special pleas (Nos. 3–14).

Pleas Nos. 3, 5 and 6, set up fraud and wrongful concealment of material information which ought to have

been communicated to defendants, and by the misrepresentation (No. 3) of Mrs. France by her agent said Chew and others in collusion with her, (No. 5) of Mrs. France personally and only, and (No. 6) of said Chew personally and only; Nos. 4 and 7, fraud, falsehood and misrepresentation as to the true age of Chew, and as to the diseases or injuries with which he had been afflicted, and fraudulent suppression, concealment and withholding of material information in regard to the said Chew and then affecting the risk, and which before and at the time of issuing the policies were known to the plaintiff, Mrs. France, and with which defendants ought then to have been made acquainted, to wit, that Chew was thirty-six years old, and had been ruptured; No. 4 alleging the fraud and concealment, &c., to have been by Mrs. France by her agent, said Chew and others in collusion with her; and No. 7 alleging the fraud, &c., to have been by Mrs. France individually and only.

Nos. 8 and 9 set up the condition that the *statements* in the proposal, answers and declarations by said Chew should form the basis of the contract of insurance, and that any untrue or fraudulent answers should render the policy null and void, and that with respect to the answers respectively to question 4 as to the date of Chew's birth, and to question 5 as to his age next birthday, said Chew at the time of the answers well knew respectively that he was not born in 1835 but in 1828, and that his age next birthday would not be thirty years but thirty-seven years.

No. 10, same as Nos. 8 and 9, except that it relates to the answer to question 11, and set up that Chew at the time of the answer well knew that he had had one of the diseases inquired of, to wit, rupture.

No. 11 sets up the condition that the *statements* in the

proposal, answers and declarations by said Chew, should form the basis of the contract of insurance, and that if said proposal, &c., should be found in any respect false or fraudulent, the policy should be null and void, and alleges that "certain answers of said Chew were at the time of the making thereof false and untrue."

Nos. 12, 13 and 14, same as No. 11, except that they allege specifically that the answers to question 4, as to date of birth,—5, as to age next birthday,—and 11, as to said Chew's having had certain diseases were respectively false and untrue, and stating wherein they were so.

The plaintiffs (Record, pp. 13, 14, 15), as to pleas Nos. 2 and 16, joined issue; as to No. 1, replied *nil debet;* as to Nos. 3, 5 and 6, they replied by denials *in hæc verba;* to Nos. 8 and 9, by denials of the averment of knowledge of Chew as to the alleged falsity of his answers respecting the date of his birth and age, and the truth of the date and age alleged in these pleas respectively; to No. 11, by denial of the falsity of Chew's answers; to No. 15, by averment of interest of Mrs. France in the life of Chew.

To all these replications, except the two first, defendants rejoined with a *similiter* (Record, p. 17, *orig.*, p. 50.)

To pleas Nos. 4, 7, 10, 12, 13 and 14, the plaintiffs replied (Record, pp. 13, 14, 15, *orig.* pp. 38, 39, 40, 41, 42) in such manner that the defendants demurred (Record, pp. 15–17).

After hearing and argument upon the demurrer, it was, by leave of the Court, agreed that the pleas last mentioned, together with the replications and the demurrers, be withdrawn; the defendants to file pleas of

*non-assumpserunt* and set-off, with leave, &c., in lieu of said pleas, which were to be treated and regarded as notice of special matter, and the defendants on the trial might give in evidence any facts which might have been given under the pleas so withdrawn, and also any facts showing or tending to show, by reason of fraud or otherwise, that defendants never undertook and promised as in the declaration alleged (Record, p. 18, *orig.* p. 53).

Pleas were filed in accordance with the agreement, and replications thereto (Record, p. 17, *orig.* pp. 51, 52).

Thus the case was at issue upon the special pleas Nos. 2 and 15 as to interest; Nos. 3, 5 and 6 as to fraud, concealment and misrepresentation in obtaining the policy; Nos. 8 and 9 as to the knowledge of Chew of the falsity of his answers as to his date of birth and age; and No. 11 as to the falsity of "certain" of his answers; and also upon the general issue, with leave specially to give certain facts in evidence.

The case was tried May 6, 1873, before Hon. John Cadwalader, District Judge, and a special jury, and a verdict rendered for defendants (Record, p. 18). A motion and reasons for a new trial were filed (Record, pp. 18, 19) and a new trial granted (Record, p. 20). The case was again tried April 8, 1874, before Hon. William McKennan, Circuit Judge, and a special jury, and the result was a verdict for plaintiffs, $10,950 (Record, p. 20), afterwards reduced, upon the motion for a new trial, to $10,474 by the plaintiffs remitting $476, the jury not having allowed the amount of the outstanding premium notes. (Record, pp. 20, 22, *orig.* pp. 63, 65.)

On the trial the plaintiffs gave in evidence (Record, pp. 22, 23) the policy sued on (Record, pp. 34, 35); six receipts for the annual premiums from September 13, 1866, to September 13, 1871, from A. J. Chew (Record pp. 35–37); the application for insurance (produced by defendants on call) dated September 13, 1865, signed by the plaintiff, Lucetta T. France, and by the life insured, Andrew J. Chew (Record pp. 38, 39); the certificate of the medical examination of Chew, endorsed on the application, and dated the same day (Record, pp. 46, 47).

It was admitted that Chew died May 25, 1872, and that on the 12th or 13th June, 1872, certain proofs were furnished at the office of defendants in Philadelphia, and received by defendants at Hartford, Conn., June 15, 1872, as follows: Certificate of Dr. Guth, and affidavits of John Dunn, John S. Kennelly, Charles M. Leisenring, and Mrs. Mary Chew, sworn to June 11, 1872; and two affidavits of Mrs. Lucetta T. France, both sworn to June 12, 1872. All six of these affidavits were on the same sheet in the order stated and were received by the defendants at one and the same time as proofs of loss (Record, p. 23, *orig.* p. 69).

Plaintiffs then closed.

Defendants then offered and read in evidence the certificate and six affidavits of June 11th and 12th, above mentioned (Record, p. 23, *orig.* p. 70). The certificate of Dr. Guth was of the death of Chew from pulmonary consumption (Record, p. 40, *orig.* p. 100). The affidavits were, 1st, John Dunn, to the identity of the party insured (Record, p. 41, *orig.* p. 101); 2d, of the undertaker as to the burial, (Record, p. 41, *orig.* p. 102); 3d,

of the party who officiated at the interment (Record, p. 42, *orig.* p. 102); 4th, by the widow of Chew, the life insured, as to his age, in which she swore that he was born October 28, 1828, and on the day of his death was 43 years, 6 months, and 27 days old (Record, p. 42, *orig.* p. 102); 5th, by the plaintiff, Mrs. Lucetta T. France, and "the party who has insured the life of another," "that she had an insurable interest in the life of Andrew Jackson Chew to the amount of $20,000, and that the same was not created by reason of any gambling or other illegal transaction, nor was the effecting of said insurance a mere gambling or speculative transaction. But the said Andrew Jackson Chew was indebted to me as follows, as his sister, and also for moneys loaned and advanced to him" (Record, pp. 42, 43, *orig.* p. 103); 6th, by the plaintiff, Mrs. Lucetta T. France, that Chew, the life insured, had not been out of the limits prescribed by the policy (Record, p. 43, *orig.* p. 104).

Mrs. France denied all knowledge of the first four affidavits and of the certificate of Dr. Guth (Record, p. 24, *orig.* p. 74).

The defendants then (Record, p. 23, *orig.* p. 70) offered in evidence Policy of Insurance No. 11,211, made and executed by the defendants under the hand of their President, attested by their Secretary, dated Hartford, Conn., July 12th, 1865, and countersigned by C. H. Brush, the manager of defendants at Philadelphia, July 17th, 1865, for $10,000 for the benefit of Mrs. Lucetta T. France, and in the same form as the one sued on (Record, pp. 43, 44, *orig.* pp. 105–107); together with the application on which said policy was issued, signed Andrew J. Chew and Lucetta T. France,

dated Philadelphia, July 12th, 1865 (Record, pp. 45, 46), and the certificate of the medical examination of Andrew J. Chew endorsed thereon and dated the same day (Record, pp. 46, 47).

The admission of this policy, application, and certificate was objected to as irrelevant.

The offer as to the policy was overruled, and its rejection is the subject of the first bill of exception (Record, p. 23, *orig.* p. 70).

The application and certificate were admitted and read by defendants (Record, p. 23, *orig.* p. 71).

Defendants then put in evidence three promissory notes (signatures admitted) made by the plaintiff, Lucetta T. France, for "part premium due and payable on policy No. 12,796," each at 12 months, and dated at Philadelphia, one September 13, 1869, for $153 55, one September 13, 1870, for $159 52, and the third September 13, 1871, for $121 75 (Record, pp. 23, 47, 48, *orig.* pp. 71, 113).

Defendants then gave evidence tending to show that Chew, the life insured, would at the time of the application and issue of the policy have been 37 or at least 35 years old his next birthday, instead of 30 as stated in the application, and that he was born October 28, 1828; that he had been ruptured from infancy, and so continued up to the date of the application and policy and up to the time of his death, and that he wore a truss from about at least 1846 up to his death (Record, pp. 23, 24, *orig.* p. 71).

They also gave evidence that at the time of the application and issue of the policy, the plaintiff, Lucetta T. France, was married to her husband, whose name is joined to her's as a party plaintiff, and that she was one

of the insured's three living sisters, both of the others being married women at the time mentioned; and that she was in no way dependent on said Chew for her support (Record, p. 24, *orig.* p. 72).

Defendants also gave evidence tending to show that at the time the application was made and policy issued Andrew J. Chew was engaged to be married, and that his engagement was known to the plaintiff, Mrs. France (Record, p. 24, *orig.* p. 72).

It was admitted that the day after the application Chew actually was married to the lady who made the affidavit as to his age, which was among the proofs of loss furnished to defendants, and who was examined on the trial by the defendants as the widow of Chew. It was also admitted that Chew left one child, the issue of this marriage (Record, p. 24, *orig.* p. 72).

Defendants also gave evidence tending to show that at the time the application was made and policy issued Chew was a person of little or no property and in humble circumstances, earning his living as a ladies' shoemaker, in a small way, in a little shop which he rented, and that at the time of his death he was indebted to parties from whom he had bought leather and materials, and that he left no estate (Record, p. 24, *orig.* p. 72).

Defendants also gave evidence tending to show that Chew knew at the time the application was made and policy issued that he was born October 28, 1828, and that his age next birthday would be thirty-seven (37) instead of thirty (30), and that he had been ruptured from infancy, and had worn a truss from at least 1846 up to the time of his application; and that he had had consumption or some disease of the lungs; and that he

was subject to habitual cough and dyspepsia; and that he had been attended by physicians for severe disease within seven years then preceding (Record, p. 24, p. 73).

Also evidence tending to show that the person examined upon the application of September 12, 1865, on which the policy issued, was not, in fact, said Andrew J. Chew, brother of the plaintiff, Mrs. France, but some other person in good health.

Defendants also gave in evidence that an annual premium of $243 50 (which was the premium charged and paid in this case) on the life of a person 37 years old would secure an insurance for $8089 79 only instead of $10,000, to secure which upon a policy issued at the age of 37 would require an annual premium of $301 (Record, p. 24, *orig.* p. 73).

Defendants then closed.

Plaintiffs in rebuttal gave evidence (Record, pp. 24, 25) as to the age and the alleged rupture and consumption or disease of the lungs, habitual cough and dyspepsia, and as to the alleged severe disease and attendance of a physician on Chew.

Also evidence tending to show that the plaintiff, Mrs. France, had at different times loaned money to said Chew, to an amount of some $2000 and upwards prior to the policy of July 12, 1865, which had never been repaid, and also some $400 in September, 1865, which had not been repaid. Also evidence as to the identity of the person who had been examined upon the September application.

Plaintiffs then called Dr. Richard J. Levis as a medical expert and proposed to ask him the following question :

"Does or does not the existence of a reducible rupture in a subject for life insurance in your opinion appreciably increase the risk of the underwriters?"

To which question the defendants objected as incompetent and irrelevant under the terms of the policy sued on.

But the objection was overruled and the question admitted; and the defendants excepted (Record, p. 25, *orig.* pp. 74, 75); and the question having been answered, that such rupture did not materially increase the risk; the admission of this question forms the subject of the second bill of exceptions.

Defendants in sur-rebuttal gave further evidence as to the age of Chew, and tending to show that the person examined on the September application was not Chew; and also as to the pecuniary circumstances of Chew at the time of the application and of his marriage.

*No evidence was offered or given to show that Mrs. France was in any way dependent upon Chew for support either in whole or in part.*

Both sides having closed defendants requested the Court to charge the jury (Record, pp. 25 to 28) in answer to twenty-five points.

The *first nine* related to the question of insurable interest (Record, pp. 25, 26, *orig.* 76, 77); and were framed to present specifically, and obtain express rulings on the question in its several aspects—of the application and policy being in fact made and taken out by Mrs. France for her own benefit; of the mere relationship of sister to Chew, the life insured, giving her

no insurable interest; of Mrs. France being a married woman and not in any way dependent on Chew for support; of Chew, at the time of the application and policy, being in such circumstances as to preclude any presumption that Mrs. France would be in any way dependent on him for support; of the necessity in order to her recovery, on the ground of interest, as one of his next of kin, of its affirmatively appearing that at the time of the application and policy, Chew was in such circumstances as to induce a reasonable probability that upon his dying intestate, Mrs. France might, as one of his next of kin, receive a portion of his estate; of Mrs. France being a married woman, and if she claimed an interest as a creditor of Chew, she was bound to show affirmatively that the alleged indebtedness was in respect to her separate estate; of her having another policy in the same company for $10,000 on Chew's life, and an indebtedness subsequent to such prior policy not exceeding the amount thereof; and if recovery were to be had on the ground of insurable interest as a creditor, the verdict ought not in any event to exceed the actual indebtedness.

10th. If the person examined was not Chew, the brother of Mrs. France, the policy is void for fraud.

11th. That the answers to the questions in the application are warranties; and if they or any of them, either in whole or in part, were false or untrue, the verdict must be for defendants (Record, p. 26, *orig.* p. 77).

12th. That even if the answers to the questions in the application are under the qualification inserted therein, as to recollection and remembrance, to be considered as representations, yet if false in a material respect, the policy is void (Ibid).

The 13th, 14th and 15th points (Ibid.) were specifically directed to the answers in respect to age; and were to the effect that if Chew was materially older than thirty (the age stated in the application) the policy is void, and that a difference of from four to seven years was material; that the expressions, "As near as I can recollect," and "As near correct as I remember," were not to be taken as giving an entirely indefinite limit to the answers, but as meaning about the age and date of birth stated; and that if the answers to questions 4 and 5, as to age, were false or untrue, the policy was void (Ibid).

The 16th, 17th and 18th points (Ibid.) referred specifically to the answer to question 11, that if it was false as to any one of the diseases mentioned therein the policy was void; and that if Chew, at the time of the application, was or had been ruptured, or had, or had had consumption or any disease of the lungs or any other of the diseases mentioned in said question, he was bound to state the fact, and also how long and to what extent; and that in case such were the fact in any particular, his answer "None" to the question was untrue and false, and the verdict must be for the defendants.

19th. This point (Record, p. 27, *orig.* p. 77) referred specifically to the answer to question 12 as to Chew being "subject to habitual cough" or dyspepsia.

20th. Was directed specifically to Chew's having had during the preceeding seven years "any severe disease," and his having been attended by a physician, and his obligation in answer to question 13, to state the particulars of such disease and the name of the physician (Record, p. 27, *orig.* p. 78).

21st. Had reference directly to question 14, as to

Chew's being at the time of the application "affected with any disease or disorder" (Ibid).

22d. That under the application and policy, Chew "was bound to state every fact in regard to his then present or prior condition of health of which he was aware, that might in any degree increase the risk;" and if he was then or had at any previous time been ruptured, or was subject to habitual cough and did not state it, the policy was void.

23d. That it was not necessary in order that a material misrepresentation should render the policy void that the death of the insured should have occurred from a cause connected with the fact misrepresented.

24th. That the answers in the former application of July 12, 1865, to the defendants for an insurance on the same life being absolute and without qualification, might reasonably lead the defendants to presume that the use in the answers to the questions in the application in the present case of the expressions, "As near as I can recollect," and "As near correct as I remember," did not mean that the applicant had no knowledge, but that the answers were nearly correct, without intending strict accuracy.

25th. That if upon the application in the present case Chew suppressed any fact in regard to his health, the policy is void.

The judge then charged the jury (Record, pp. 28–30, *orig.* pp. 79–81) to the effect that there was a substantial interest to support the policy; that to avoid the policy the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness; that it was "not probable that Chew

knew or believed that he was affected by a disease of the lungs known as consumption;" that even if he had had it when he was examined, under the circumstances his answer could not be regarded as untrue, in a sense to affect the validity of the policy; that as to rupture, if the jury "find that Chew had been laboring under such hernial disorder, the existence of this fact is made material by the agreement of the parties, and he was bound to answer truthfully with regard to it. If, however, it appears that the rupture had been completely reduced, so that its effects had entirely passed away, and it had ceased to affect his health, or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue, as nearly as he could remember. On the other hand, if the rupture had not been cured, it is hardly presumable that he could have forgotten it at the time of the application: and if the jury so find, it was his duty to disclose the fact that he had been afflicted with the disease, and his negative answer will avoid the policy; that as to the answer to the 12th question to establish its untruthfulness, it must appear that at the time of the application, Chew was subject to an habitual cough; that occasional attacks of coughing, were not within the meaning of the question, that unless he was afflicted with an habitual cough when the answer was made, the answer is not untrue, although he may have been previously subject to violent coughing spells.

The judge declined to answer defendants' points categorically and specifically, on the ground that he had sufficiently answered in a general way, all that was embodied in them; and directed the jury that if they were satisfied that the plaintiffs were entitled to recover,

the verdict should be for the amount of the policy, with interest; but if they found any of the defences set up were made out, the verdict would be for the defendants generally.

Exceptions were taken by defendants (Record, pp. 30–33, *orig.* pp. 82–87,) to the refusal of the judge to answer specifically the several points presented, and especially Nos. 1, 2, 4, 5, 6, 7, 8, 13, 14, 17, 20, 21, 23, 24, and 25 (Assignments of Error, Nos. 12 to 27. Record, pp. 49–51, *orig.* 116–119); *also* to the language of the judge: "That it would be manifestly unjust to release from his contract a party who assumed its obligations with a full knowledge of its import, and accepted the stipulated consideration" as calculated to mislead the jury, there being no evidence of any knowledge by the defendants of the alleged insurable interest beyond the statement of the mere fact of Mrs. France being Chew's sister (3d Assignment, Record p. 48, *orig.* p. 115); *also* to the charge that the fact that Mrs. France was next of kin to Chew, and therefore prospectively interested in his estate as distributee, gave her a sufficient substantial interest to support the policy (4th Assignment, Record, p. 48, *orig.* p. 115); *also* to the charge in respect to the effect of the words "The above is as near correct as I remember" (5th Assignment, Record, pp. 48, 49, *orig.* p. 115; *also* to the charge that "To avoid the policy the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorrectness" (6th Assignment, Record, p. 49, *orig.* p. 115); *also* to the charge that the avoidance of the policy on the ground of misstatement as to age, rupture, or consumption, depended on his knowing, or

having reason to believe that the answers were not correct (7th and 8th Assignments, Record, p. 49, *orig.* p. 116); *also* to the assumption in the charge of the examination of Chew by two physicians of the defendants in July and September, 1865, when one of the defences was a denial that it was Chew who had been examined in September (9th Assignment, Record, p. 49, *orig.* p. 116); *also* to the charge that "Under the evidence, it is not probable that Chew knew or believed that he was affected by a disease of the lungs known as consumption," &c. (10th Assignment, Record, p. 49, *orig.* p. 116); *also* to the charge, "If it appears that the rupture had been completely reduced, so that its effects had entirely passed away, and it had ceased to affect his health, or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue, as nearly as he could remember" (11th Assignment, Record, p. 49, *orig.* p. 116).

## ASSIGNMENTS OF ERROR.

1. Because the learned judge erred in overruling the offer in evidence by defendants of "A Policy of Insurance No. 11,211, made and executed by the defendants under the hand of their President, attested by their Secretary, dated Hartford, Conn., July 12, 1865, and countersigned by C. H. Brush, the Manager of defendants at Philadelphia, July 17, 1865, for $10,000, for the term of the life of Andrew J. Chew, for the benefit of Mrs. Lucetta T. France, and in the same form as the one sued on" (copy annexed marked F[1]) as irrelevant.

2. Because the learned judge erred in permitting the witness, Dr. Richard J. Levis, to be asked the ques-

tion, "Does or does not the existence of a reducible rupture in a subject of life insurance, in your opinion appreciably increase the risk of the underwriters?" the same having been objected to by defendants as incompetent and irrelevant under the terms of the policy sued on.

3. Because the learned judge erred in charging the jury "That it would be manifestly unjust to release from his contract, a party who assumed its obligations with a full knowledge of its import, and accepted the stipulated consideration," as there was no evidence in the case to show that defendants "assumed the obligations" of the policy in question, with any knowledge in this respect (the alleged interest of the party for whose benefit the life of Chew was insured), beyond the mere fact of Mrs. France being Chew's sister; and the instruction was calculated to mislead the jury.

4. In charging that:—"Under the circumstances shown here, Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee: this was a sufficient substantial interest to support the policy."

5. In charging:—But the answers here (given by the assured to the questions propounded in the application) are qualified by the words appended at the foot of the application, "the above is as near correct as I remember," which are applicable to all the statements made by the assured. He must be understood, therefore, as stipulating only for the integrity and approximate accuracy of his answers, and not for their absolute verity. Without this qualification, substantial error in any of his answers would avoid the policy, irrespective of his motive, because he warranted their truth;—with it, the

plaintiffs' right to recover will not be defeated, unless it appears that some one of the answers was consciously incorrect.

6. In charging:—"To avoid the policy, then, the jury must be satisfied that the answers, or some of them, were untrue in any respect materially affecting the risk, and that the assured knew of their incorectness."

7. In leaving the question of the policy being void on the ground of misstatement as to the age of the assured, to depend on the question,—Whether "*he knew or had reason to believe*, that the year of his birth as stated in the answer did not correctly indicate his age."

8. In charging that if the assured had had consumption or rupture, and the fact was "*knowingly* misstated by him," the plaintiff cannot recover.

9. There was error in assuming in the charge, in connection with the question as to Chew's having had consumption, as a positive fact, that Chew had actually been examined by two physicians of the Company (defendants) in July and September, 1865, when one of the defences was a denial that Chew had ever been examined under the application of September 1865.

10. There was error in charging:—"Under the evidence, it is not probable that Chew knew or believed that he was affected by a disease of the lungs known as consumption. In view of the fact that he survived for years after it is alleged he was so affected, and of the result of his examination by two different physicians of the insurance company, in July and September 1865, the jury will probably infer that such disease, if he had it at all, was not so far developed as to be capable of detection. Even if he had it then, under such circum-

stances his answer cannot be regarded as untrue, in a sense that would affect the validity of the policy."

11. There was error in charging that, "If it appears that the rupture had been completely reduced so that its effects had entirely passed away, and it had ceased to affect his health, or impair his capacity to take fatiguing and prolonged exercise, the jury will determine whether the answer is untrue as nearly as he could remember."

12. There was error in declining categorically to answer the points presented by defendants, on the ground that all that was embodied in them was sufficiently answered as far as necessary in the general charge.

13. There was error in declining to answer specifically defendants' *first* point:—"That if the jury believe that the application for insurance, and the policy in question, though nominally in the name of Andrew J. Chew, for the benefit of Lucetta T. France, were in fact made and taken out by the said Lucetta T. France, for her own benefit she must show an insurable interest in the life of said Andrew J. Chew before she can recover, and the mere fact that she was his sister, did not give her such insurable interest."

14. There was error in declining to answer specifically defendants' *second* point:—"If the jury believe that the premiums for the insurance, and the renewals thereof, were paid by said Lucetta T. France, whether in cash or by her notes, there is evidence from which the jury can find that the application for insurance was made, and the policy in question taken out by said Lucetta T. France for her own benefit."

15. There was error in declining to answer specifi-

cally defendants' *fourth* point:—"If the jury believe that at the time the application for insurance was made, and the policy in question issued, Lucetta T. France was a married woman, and in no way dependent upon Andrew J. Chew for her support either in whole or in part, the mere fact that she was his sister would not give her an insurable interest in his life."

16. There was error in declining to answer specifically defendants' *fifth* point:—"If the jury believe that at the time the application for insurance was made, and the policy in question issued, Andrew J. Chew was in such circumstances as to preclude any presumption that Lucetta T. France would be in any way dependent upon him for her support, either in whole or part, and she was not, in fact, at the time, so dependent upon him, then the mere fact that she was his sister, would not give her an insurable interest in his life."

17. There was error in declining to answer specifically defendants' *sixth* point:—"Unless it affirmatively appear from the evidence that Andrew J. Chew at the time the application was made and the policy issued, was in such circumstances as to induce a reasonable probability that upon his dying intestate Lucetta T. France might, as one of his next of kin, receive a portion of his estate, the mere fact of her being one of such next of kin would not give her an insurable interest in his life."

18. There was error in declining to answer specifically defendants' *seventh* point:—"If at the time the application was made, and the policy issued, Lucetta T. France was a married woman, she must, in order to have had any insurable interest in the life of Andrew J. Chew as a creditor, and to recover as such upon the policy, show affirmatively and positively that any

monies alleged to have been loaned to him and in respect of which she claims to have been his creditor, were the monies of her separate estate: and there is no evidence in this case from which, under the law, the jury can find that any monies alleged to have been loaned to Andrew J. Chew by Mrs. France were the monies of her separate estate."

19. There was error in declining to answer specifically defendants' *eighth* point:—"If at the time the application in the present case was made, and the policy issued thereon, Lucetta T. France already had a policy in full force of $10,000 on the life of Andrew J. Chew in the Company defendants, then the creation or existence of an indebtedness by him to her subsequently to such prior policy and not exceeding the sum thereby insured, could not give her an insurable interest in his life as a creditor in respect to the present policy."

20. There was error in declining to answer specifically defendants' *thirteenth* point:—"If the jury believe that Andrew J. Chew, at the time the application was made, was materially older than thirty years, the age stated in the application, the policy is void, and a difference in age of four to seven years is material."

21. There was error in declining to answer specifically defendants' *fourteenth* point:—"That the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' are not to be taken as giving an entirely indefinite limit to the answers in the application, but must be taken as meaning in respect to age, *about* the age and date of birth stated."

22. There was error in declining to answer specifically defendants' *seventeenth* point:—"If at the time when the application for insurance was made and the

policy issued, Andrew J. Chew was or had been ruptured, he was bound in answer to question No. 11, to state the fact, and also how long and to what extent; and if the jury believe that at the time mentioned, he was or had been ruptured, his answer 'none' to said question No. 11, was untrue and false, and the verdict must be for the defendants."

23. There was error in declining to answer specifically defendants' *twentieth* point:—"If at the time the application for insurance was made and the policy issued, A. J. Chew had had at any time during the last preceding seven years, 'any severe disease' of any kind, he was bound in answer to question 13 to state the fact and the particulars and the name of the attending physician, and if the jury believe that at the time mentioned he had had at any time during the last preceding seven years 'any severe disease' of any kind, and had been attended by a physician, his answer 'no' to said question 13 was untrue and false and the verdict must be for the defendants."

24. There was error in declining to answer specifically defendants' *twenty-first* point:—"If at the time the application for insurance was made and the policy issued, A. J. Chew was ruptured, or consumptive, or had habitual cough, or was 'afflicted with any disease or disorder' of any kind, he was bound in answer to question No. 14 to state the fact, 'and what the disease or disorder was;' and if the jury believe that at the time mentioned, he was ruptured or consumptive, or had habitual cough, or was afflicted with any 'disease or disorder' of any kind, his answer 'no' to said question No. 14 was untrue and false, and the verdict must be for defendants."

25. There was error in declining to answer specifically defendant's *twenty-third* point:—"It is not necessary in order that a material misrepresentation shall render the policy void, that the death should have occurred from a cause connected with the fact misrepresented."

26. There was error in declining to answer specifically defendants' *twenty-fourth* point:—"That the fact that in the application of July 12, 1865, to the defendants for an insurance on the same life, the answers to the questions were absolute and without any qualification whatever, might reasonably lead the defendants to presume that the use in the answers to the questions in the second application of the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' did not mean that the applicant had no knowledge on the subjects inquired of, but that he considered the answers nearly correct, without meaning to bind himself to strict accuracy."

27. There was error in declining to answer specifically defendants' *twenty-fifth* point:—"That if the jury believe that upon the application of September 13, 1865, the said A. J. Chew suppressed any fact in regard to his health, the policy is void, and the verdict must be for defendants."

SAMUEL C. PERKINS,
*Defendants' Attorney.*

## BRIEF OF ARGUMENT.

1. As to the rejection of the offer of the Policy of July 12, 1865, on the ground that it was irrelevant (Record, p. 48, *orig.* 114). 1st Assignment.

This policy was in the same company, defendants, upon the same life, for the benefit of the same party, the plaintiff, and issued only three months prior to the policy in suit, and for $10,000.

It was relevant to show that the application which had been made, and upon which it had issued, and which was signed by Mrs. France was actually accepted by the defendants, and acted upon in the issuing of the policy.

It was relevant, also, in view of the fact of the claim of interest on the ground of indebtedness of Chew to Mrs. France, which was expressly alleged in the affidavit of Mrs. France furnished to the defendants as part of the proofs of loss in this case; and in view of the issue distinctly raised by the pleadings as to insurable interest, upon which evidence was given by the plaintiffs, showing that the issue was regarded by them as material.

2. As to the admission of the question put by plaintiffs to Dr. Levis as to the effect upon the risk of a reducible rupture (Record, p. 25, *orig.* 74). 2d Assignment.

The statements and declaration were to be true, not "as to important or material statements, or to those supposed to be material, but as to all statements:" *Jeffries* v. *Economical Life Ins. Co.*, 22 Wallace, 47. "The materiality of such statements is removed from the con-

sideration of a court or jury by the agreement of the parties that such statements are absolutely true:" *Ætna Life Ins. Co.* v. *France*, 91 U. S. Reports, S. C. (1 Otto) 510, 512.

Even giving to the expressions in the application as to remembrance and recollection their fullest force, still the materiality of any of the questions was not in issue and not the subject of inquiry by court or jury. Whether material or not, if Chew remembered or recollected that he had ever been ruptured, he was bound to state it, no matter what might have been its character. Hence the question put to Dr. Levis, was clearly irrelevant, and his answer being in the negative, was calculated to injure the defendants by leading the jury to suppose that it was a matter of no consequence what Chew's answer was, if the rupture which he had had was reducible. See the opinion of Mr. Justice Hunt in *Ætna Life Ins. Co.* v. *France*, *ubi supra*, particularly pp. 514–516.

3. As to insurable interest—the general question presented by the assignments of error 3, 4, 13–19.

A mere wagering policy upon the life of another is void: *Franklin Life Ins. Co.* v. *Hazzard*, 41 Ind. Rep., 116 (1872); *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. Rep. (9 Smith), 516 (1861); *American Life and Health Ins .Co.* v. *Robertshaw*, 26 P. S. R. (2 Casey), 189 (1856); *Adams* v. *Penn. Ins. Co.*, 1 Rawle, 97 (1828); *Lord* v. *Dall*, 12 Mass., 118 (1815); *Loomis* v. *Eagle Life Ins. Co.*, 6 Gray, 396 (1856); *Stevens* v. *Warren*, 101 Mass. 564 (1869); 3 Kent. Comm. 368.

To free a policy of life insurance from the objection

of being a mere speculative risk or a wagering policy, some interest in the life insured must be shown to exist in the party seeking to recover upon it.

It is the insurable interest in the person who is to receive the benefit of the policy, which is the test, and not the manner in which the insurance is effected, nor the persons by whom the premiums are paid. By the terms of the contract these must be paid by the applicant; but whether or not the money was furnished him for the purpose by the person for whose benefit the policy is made, would be known only to the two, and would be beyond the power of the company to prove: *Bevin* v. *Conn. Mut. Life Ins. Co.*, 23 Conn., 244 (1854); *Kennedy* v. *New York Life Ins. Co.*, 10 Louis. Ann., 809 (1855).

This interest may be that of a creditor: *Am. Life and Health Ins. Co.*, v. *Robertshaw*, 26 P. S. R., (2 Casey), 189 (1856); *Kennedy* v. *New York Life Ins. Co.*, 10 Louis. Ann., 809 (1855).

But if the interest relied on be that of a creditor, the policy must be reasonably proportioned to the amount of the indebtedness, and will not be good beyond that amount: *Cammack* v. *Lewis*, 15 Wallace, 643 (1872); *Am. Life and Health Ins. Co.* v. *Robertshaw*, 26 P. S. R. (2 Casey), 189 (1856); *Kennedy* v. *New York Life Ins. Co.*, 10 Louis. Ann., 809 (1855), especially opinion of Lea, J. and authorities cited. And see per Sharswood, J. (Supreme Court, Nisi Prius), Philadelphia, in charge to the jury in *Fox* v. *Penn. Mut. Life Ins. Co.*, 4 Bigelow Life and A., Ins. Rep., 458 (1874.)

Now in the present case the only evidence as to any indebtedness of Chew to Mrs. France was of some

$2,000 prior to the policy sued on, and as to which it was offered to be shown that she had an already existing policy of $10,000 on his life in the same company, taken out but three months previously. It was in evidence that the application had been made for this prior insurance, but the fact that the policy had actually issued upon it was excluded, and its relevancy in this very connection shows the error which forms the ground for the first assignment, and the injury which it was to the defendants. But the application was in evidence, and the jury would have a right to infer from this and all the circumstances of the case, particularly the fact of the issue of the policy sued on, that the policy had been issued upon the prior application; and if the fact were that no such policy had been issued, it was for the plaintiffs to show it.

But the learned judge said nothing whatever in his charge to the jury upon the question of any alleged indebtedness of Chew to Mrs. France, but treats it as if it had no place whatever in the cause. This question of an insurable interest, as resting upon an alleged indebtedness, which was expressly alleged in the proofs of loss, and which was made distinctively an issue by the pleadings, and upon which evidence had been given by the plaintiffs themselves, is entirely ignored in the charge in all its aspects. And yet it was specifically and distinctly brought to the notice of the learned judge in the seventh, eighth and ninth points of defendants (Record, pp. 25, 26, *orig.* pp. 76, 77).

If it be said that these points became immaterial in view of the charge of the judge, that the mere relationship of sister to brother, and the prospective advantage of her inheriting a part of his estate as one of his next

of kin, were sufficient to create an insurable interest; still, in view of the combined nature of the defences, especially in the bearing which the effect of the existence or non-existence of an alleged indebtedness, which was actually set up and made prominent and distinct as an element in the cause, would have upon the *bona fides* of the whole transaction, it was a serious injury to the defendants that the jury, from the utter silence of the judge upon the subject, were led to suppose that the whole matter of such alleged indebtedness was entirely outside of any issue involved in the case.

The question of the alleged indebtedness of Chew to Mrs. France being thus material, the origin and nature of that indebtedness became of essential consequence. Mrs. France was a married woman, and if she claimed upon the policy, by virtue of an insurable interest, as creditor (a claim which she definitively asserted and set up), she was bound to show affirmatively that the monies she alleged she had loaned, and which were intended to be secured by the policy, were of her own separate estate. If they were monies of her husband, or of another, it is apparent that a door for fraud of the most extended kind might be set wide open by sustaining an insurable interest in a life upon such a ground.

Mrs. France, at the time the policy in question issued, had an existing insurance in the same company upon Chew's life, effected but three months before, to an amount five times in excess of any indebtedness alleged or proved. To uphold an insurable interest on the present policy on the slim foundation of an alleged additional indebtedness of $400 (just one-twenty-fifth of the amount of the policy), would be a flagrant violation of the principle laid down in *Cammack* v. *Lewis*, cited

above. And see also *Guardian Mut. Life Ins. Co.* v. *Hogan*, in the Supreme Court of Illinois, particularly noticed below.

The interest must not be merely colorable, and the form in which the insurance is effected or the policy sought to be enforced on behalf of the party claiming its benefit, will not be allowed as a cover for a mere speculative risk: *Stevens* v. *Warren*, 101 Mass., 564 (1869); *Cammack* v. *Lewis*, 15 Wallace, 643 (1872); *Mowry* v. *Home Life Ins. Co.*, 9 R. I., 346 (1874.)

An interest in the life of another may be sufficient to support a policy of insurance upon that life, where the party claiming the benefit of the insurance occupies such a relationship to the life insured as that his legal rights, or well-grounded expectations of support or advantage in life will be impaired by the death of the insured.

Such is the case of *Lord* v. *Dall*, 12 Mass., 118 (1815), where an unmarried sister who had lived with and been supported by her brother, also unmarried, was held to have such an interest in his life, as to take the policy out of the objection of speculation, and to give her the right to recover an insurance designed for her benefit.

It is on this same principle that policies for the benefit of a wife or children have been sustained. It would be a waste of time to cite authorities in support of such policies; their validity has never been seriously questioned.

But no mere relationship, however close, where neither the law casts a legal obligation upon the insured in respect to the party claiming the benefit of the insurance,

nor any circumstances exist to sustain a well-grounded, reasonable and proximate (and not remote or indefinite) expectation that the death of the insured will impair or injuriously directly affect the temporal affairs of the party seeking to enforce the insurance for his own benefit, will of itself suffice to relieve the transaction from the objection of its being a wager.

The proposition is well stated from a reverse point of view, by Shaw, C. J., in *Loomis* v. *Eagle Life Ins. Co.*, 6 Gray, 399 (1856). "All, therefore, which it seems necessary to show in order to take the case out of the objection of being a wager policy is, that the insured has some interest in the life of the *cestui que vie;* that his temporal affairs, his just hopes and well grounded expectations of support, of patronage and advantage in life will be impaired, *so that the real purpose is not a wager, but to secure such advantages supposed to depend on the life of another;* such, we suppose, would be sufficient to prevent it from being regarded as a mere wager."

If this proposition be sound and accurate, the converse must be equally true, that in the absence of any of the requisites set forth, and where the real purpose is merely to secure a sum of money on the death of the insured life,—a speculation on the risk of that death taking place in a longer or a shorter period, the transaction is void as a wager—a gambling adventure.

This affords a true criterion for the determination of cases where the interest alleged is that of relationship, and has been the governing principle in such as have been adjudicated.

Such, for example, as a sister for many years supported by and dependent on her brother, whose life is

insured for her benefit, *Lord* v. *Dall*, 12 Mass., 118 (1815); a father, entitled to the earnings of a minor son, whose life is insured for the father's benefit, *Loomis* v. *Eagle Life Ins. Co.*, 6 Gray, 396 (1856); *Mitchell* v. *Union Life Ins. Co.*, 45 Maine, 104 (1858); an adult son in the life of a father, whose death would cast on him the support of his mother and her minor children, *Kane* v. *Reserve Mutual Life Ins. Co.*, 31 Leg. Int. 196 (1874); a woman under contract of marriage, in the life of her intended husband, *Chisholm* v. *National Capital Life Ins. Co.*, 52 Missouri, 213 (1873); a reputed wife treated and supported as such, in the life of the man claimed as, and claiming to be her husband, *Equitable Life Assurance Soc.* v. *Patterson*, 41 Ga., 448 (1870); a wife in the life of her husband, *Baker* v. *Union Mutual Life Ins. Co.*, 43 N. Y., 283 (1871.).

It is believed that no case can be found where a policy in favor of the husband on the life of his wife has been sustained on the ground that he had an insurable interest merely as husband. And see 3 Kent Com. 368; Angell on Life and Fire Ins. § 298; Bunyon on Life Ins. 14.

The whole question of insurable interest as depending upon relationship and an alleged claim of indebtedness is so well considered, in a late case in the Supreme Court of Illinois, decided June 20, 1876, and reported 5 Ins. Law Journ. 835, that a more extended notice than a mere reference seems advisable.

The policy was issued on the life of John Hogan, for the benefit of his son Patrick, and the defence being *inter alia* a want of insurable interest, was sought to be overcome by insisting upon the existence of a claim by

the son against the father, for compensation for services rendered after he became of age, and also upon the ground that the mere fact of relationship was sufficient to give an insurable interest.

The court below, in answer to a request by plaintiff, gave *inter alia* the following instruction:

"If the jury believe from the evidence that the plaintiff, Patrick Hogan, was the son of John Hogan, and that the relations between the father and son were amicable and affectionate, and that John Hogan was a prosperous and well to do man, and if the jury further believe from the evidence that Patrick Hogan had remained at home and worked for his father several years after he became of age, for which he had received no compensation from his father, and if they also believe from the evidence that Patrick Hogan had made valuable improvements after he became of age, upon eighty acres of land of his father's, under a promise or a well grounded expectation that his father would give him the land upon which the improvements had been made, and that his father, John Hogan, had subsequently disposed of the land, and had made said Patrick Hogan no compensation for the improvements made by him, said Patrick Hogan, thereon, and that he, Patrick Hogan, had a just, legal, and moral claim upon his father for such labor and improvements upon said piece of land at the time of making said application for insurance upon the life of his father, and the issuing the policy thereon, then the court instructs the jury that such facts would constitute an insurable interest in Patrick Hogan, in the life of his father, John Hogan."

And refused to instruct the jury as requested by defendants as follows:

"If you shall find from the evidence that the applications for insurance, bearing date December 29, 1868, and October 28, 1872, offered in evidence and purporting to have been made by John Hogan, were really in

substance the application of Patrick Hogan, for insurance on the life of his father, then you will inquire whether Patrick had an insurable interest in the life of his father which would support a policy for $10,000.

"In determining this question, you will inquire whether from the evidence it appears that at the time of making such applications, said Patrick had any pecuniary interest as creditor or otherwise in the life of his father, or any reasonable expectation of profit or advantage which might be thwarted by his father's death; for the law will not enforce policies of insurance procured for mere gambling or wager purposes upon lives, on the continuance of which the insured cannot be deemed to have an insurable interest; and the mere relation of father and son, where both parties are of mature years, and live apart in independent pecuniary circumstances, and mutually entirely independent of each other, and having no business relations with each other, does not create an insurable interest in the son on the life of the father; and in deciding whether in this case Patrick Hogan had such an interest in his father's life as will support the insurance procured, you will take into account all the evidence as to the respective ages and situations in life of the father and son, and their business and social relations, and all other facts which tend to show whether, as above defined, the son had an insurable interest in his father's life at the date of his application aforesaid.

"You are further instructed that though a party may have some insurable interest in the life of another as creditor or otherwise, yet if the amount of insurance procured upon such life appears palpably to be very largely in excess of any possible loss the assured can suffer from the death of the insured, then the presumption of a gambling or wager insurance arises, which calls upon the assured to show that such insurance was not procured for a mere cover for gambling, or a wager upon the life of the insured; and, in this case, if you believe, from the evidence, that the plaintiff had some

interest of an insurable character, as already defined, in his father's life, at the date of his several applications for insurance, yet if you find from the evidence that the amount procured was vastly disproportionate in its excess to any probable loss which Patrick might suffer from his father's death, such circumstance has a tendency to prove that the insurance was procured for mere purpose of speculation, and as a cover for gambling, and if from the evidence you shall find that such was the fact, then the plaintiff cannot recover in this action."

The Supreme Court, Sheldon, J., delivering the opinion, held as follows:

"Under the facts we consider that Patrick Hogan had no just or legal claim upon his father for labor or improvements, and that should not have been submitted to the jury as a question for them to find upon. A moral claim would not constitute an insurable interest in behalf of one as a creditor. The facts, as we regard, were no more than evidence tending to show an insurable interest, and should not have been declared by the court to constitute an insurable interest." And after citing *Ruse* v. *Mut. Ben. Life Ins. Co.*, 23 N. Y., 516, and 3 Kent, 11th edit. 462–3, proceed: "It is said that every man has an interest in his own life to any amount he chooses to value it, and may insure it accordingly. But what is such an interest in the life of another as will support a contract of insurance upon the life is confessedly not as yet very well defined under the authorities. Some of them tend in the direction that mere relationship as between father and son reciprocally, is a sufficient foundation upon which to rest an insurable interest. Mr. May in his late treatise on the Law of Insurance, § 107, says that the precise question yet remains to be decided; and he states as the result of his review of the authorities, his conclusion to be that the relationship seems to be of little importance, except as tending to give rise to the circumstances which jus-

tify a well-founded expectation of pecuniary advantage from the continuance of the life insured, or risk of loss from its termination. Mr. Bliss in his work on Life Insurance, § 31, seems to arrive at essentially the same conclusion.

"We are disposed from an examination of the authorities and our own sense of the requirement of sound public policy, to concur in such conclusion, and hold that the mere relation here of father and son, did not constitute an insurable interest in the life of the father, unless the son had a well-founded or reasonable expectation of some pecuniary advantage to be derived from the continuance of the life of the father.

"As respects the second refused instruction, . . . . . *Cammack* v. *Lewis*, 15 Wallace, 643, was a case where, in a policy of insurance to a creditor on the life of a debtor, the sum insured was so largely disproportionate to the amount of the creditor's claim, that the policy was held void as being a mere wager policy. This would seem to have entitled the defendant to the instruction."

The judgment was reversed for the refusal to give the instructions requested by the defendants and for giving the instruction requested by the plaintiff.

The contract in the present case is to be governed by the law of Connecticut, where the principal office of the company was located, and where it was contemplated that the contract was to be performed. See the policy (Record, p. 5, *orig.*, p. 14). There is nothing to show that the parties had specially in view the law of the place where the contract was made by an agent of the company: *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. (9 Smith) 516 (1861); *St. John* v. *American Mutual Life Ins. Co.*, 2 Duer, 419 (1853).

The law of Connecticut as early as 1797 made wagering contracts void: Gen. Stat. (revision of 1875) title 16, chap. 5, § 1, p. 228:

"*All wagers*, and all contracts and securities whereof the whole or any part of the consideration shall be money or other valuable thing won, laid or betted at any game, horse-race, sport or pastime, and all contracts to repay any money knowingly lent at the time and place of such game, race, sport or pastime to any person so gaming, betting or wagering, or to repay any money lent to any person who shall at such time and place so play, bet or wager, *shall be utterly void.*"

In *Lewis* v. *Phœnix Mutual Life Ins. Co.*, 39 Conn., 100 (1872), it is expressly held that the mere relationship of a brother to a brother, is not such an interest as to support a policy of life insurance.

Wagers involving any immorality or crime, or in conflict with any principle of public policy are void; and a wagering policy is of this class, coming within the latter clause. And policies without interest upon lives are more pernicious and dangerous than any other class of wager policies, because temptations to tamper with life are more mischievous than incitements to mere pecuniary frauds: per Selden, J., *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. (9 Smith) 516; *Mount* v. *Waite*, 7 Johns 434.

If the contract is to be governed by the law of Penna., it is equally true that it is void, if a wagering policy, and to relieve it from that objection, an interest must be shown; and when this interest is not a strict right, or a right derived under a contract, or depending upon a duty imposed by law, but rests on mere expectation or hope, that expectation or hope must be such as to amount to a moral certainty, and not the vain and idle imagination or fancy of a speculative mind. If a policy is effected upon a life under such circumstances

as to permit it to be considered as a valued policy, there must not be such over-value as to make it a mere cloak for speculation.

In *Pritchett* v. *Ins. Co. of N. America*, Shippen, C. J., 3 Yeates, 458, 464 (1803), "conveyed the sentiments of the whole Court," in saying, "We have adopted the policy and principles which gave rise to the act of Parliament" [19 Geo. II., c. 37, "which was intended to put an end to insurances without real interest, which in process of time had become a mere cover for gaming contracts."] There cannot be indemnity without loss, nor a loss without an interest. *A policy, therefore made without interest, is a wager policy*, and has nothing in common with insurance but name and form." "Every species of gaming contracts wherein the insured, having *no* interest, or a *colorable* one merely, or having a small interest, *much over-values* it in a valued policy, under the cloak of insurances, are reprobated both by our law and usage."

It is true this was a case of marine insurance, but the principle is the same, and is in entire accord with the decision of this Court in *Cammack* v. *Lewis*, 15 Wallace, 643 (1872).

See also *Ellmaker* v. *Franklin Fire Ins. Co.*, 6 Watts & Serg. 439, 445 (1843), that the principles and policy of the English statute of Geo. II. above referred to have been adopted in Pennsylvania.

In *Edgell* v. *McLaughlin*, 6 Whart. 176, 179 (1840), *Pritchett* v. *Ins. Co. of N. America*, was held to be correct in the principle established that "wagers were considered contrary to the genius and policy" of the common law of Pennsylvania. And the language of the Court above referred to is expressly cited with ap-

proval: "*Every species of gaming contracts wherein the insured having no interest, or a colorable one merely, or having a small interest much over-valued in a policy, under the cloak of insurances, is reprobated by our law and usage.*" See also *Adams* v. *Penna. Ins. Co.*, 1 Rawle, 97 (1828).

The issuing of the policy upon the representation of Mrs. France that she had an interest, is not even *primâ facie* evidence of such interest: *Ruse* v. *Mutual Benefit Life Ins. Co.*, 23 N. Y. (9 Smith), 516.

Even in actions upon marine policies, before the doctrine that wagering policies upon ships are valid had crept in inadvertently, through the case of *Depaba* v. *Ludlow*, Comyns, 361; s. c., 2 Strange, 1250, it was necessary to prove an interest.

*Saddlers' Company* v. *Badcock*, 2 Atk. 554, and see *Crawford* v. *Hunter*, 8. Term Rep. 14, and the remarks of Selden, J., in delivering the opinion of the Court in *Ruse* v. *Mut. Ben. L. Ins. Co.*, 23 N. Y. (9 Smith) 516, (1861); 1 Parsons' Marine Ins., 158, *note.*

In the present case the party for whose benefit the insurance was taken out, was one of three sisters. Aside from the question of indebtedness which has already been considered, and rests upon entirely different and independent grounds; it did not in anywise appear, nor was evidence offered to show that there was any interest whatever beyond the mere fact of relationship. There was no evidence, or attempt at evidence, of any dependence of the sister on the brother, or of any prospective change of circumstances (even the most

indefinite or imaginary) on the part of the sister, which would follow the death of the brother whose life was insured for her benefit. So far as the alleged indebtedness went, its tendency was directly in the face of any inference of advantage upon the ground now under consideration. And the evidence given by defendants (Record, p. 24, *orig.* p. 72) was that the sister was at the time of the application and policy, and continued to be up to the trial, a married woman, whose husband was alive; and that she was in no way dependent on Chew for her support; and that Chew was a person of little or no property, in humble circumstances, earning his living as a ladies' shoemaker, in a small way, in a little shop which he rented, and that at the time of his death he was actually indebted to parties from whom he bought leather and materials, and that he left no estate.

Defendants also gave evidence to show (Record, Ibid.) that at the time of the application and policy Chew was engaged to be married, and that his engagement was known to Mrs. France; and it was admitted that he actually was, the day after the application was made, married to the lady who made the affidavit of his age as one of the proofs of loss, and who was examined as a witness by the defendants, and that he left one child the issue of this marriage.

It may be suggested here, that if the contract should be considered as to be governed by the law of Pennsylvania, owing to the provision as to countersigning by the agent in that State; and that it had no force or validity until so countersigned; then it follows that as the policy was not countersigned till the 18th of September, 1865, five days after the application and four days after the marriage of Chew, Mrs. France's interest

as one of the next of kin and sister of the insured life becomes infinitesimal, if it does not vanish altogether, in view of the additional interposed contingencies of Chew dying intestate, after his wife, and without issue. Under the intestate laws of Pennsylvania, had he died without issue, his widow would take one half of the personalty (if he left any) absolutely, and the other half would go to his collaterals; if he left issue they would take two-thirds and the widow one-third.

If an insurable interest in a life insured is to be sustained upon so slender and flimsy a frame-work as that in the present case set up on the ground of mere relationship of sister to brother, and of being one of the next of kin, it seems scarcely worth while to hold that any interest is necessary. The whole operation of Mrs. France was the baldest kind of a wager, a naked speculation, pure and simple on the part of the sister—a wager on her part for $10,000 (or for $20,000 if both policies are included) upon the probabilities of the death of her brother. Surely such a contract is against the policy of the law, and the courts will not be astute to sustain it.

And yet the Court below (Record, p. 28, *orig.* p. 79) say positively, "But under the circumstances shown here, Mrs. France was next of kin to Chew; and was therefore prospectively interested in his estate as a distributee. This was a sufficient substantial interest to support the policy. It is not, therefore, invalid upon this ground."

And the Court further declined (Record, p. 30, *orig.* p. 81) to answer categorically the 1st, 3d, 4th, 5th points of defendants, in each of which the question of insurable interest, based on the mere fact of Mrs. France

being the sister of Chew was distinctly presented in varied aspects (Record, p. 25, *orig.* p. 76); and declined also to answer categorically the 6th point of defendant, in which the question of insurable interest in Mrs. France as one of the next of kin of Chew, and the probability of her receiving a portion of his estate was distinctly presented (Record, p. 25, *orig.* p. 76). This must be taken as a refusal to charge in the manner requested.

But is not the charge of the learned judge, which forms the subject of the 4th Assignment of Error (Record, p. 48, *orig.* 115), that, "Under the circumstances shown here Mrs. France was next of kin to Chew, and was therefore prospectively interested in his estate as a distributee; this was a sufficient substantial interest to support the policy," based upon an entire misapprehension of the nature of insurable interest? If such interest is necessary at all it is an interest in the *life*, not in the *death* of the insured. That is, because the death will or may in some reasonable probability deprive the beneficiary under the policy, of some advantage which would result from the continuance in life of the party insured; therefore, the beneficiary has an interest in such continuance of that life which is entitled to be secured by provision for the payment of a sum of money upon the death of the life insured to compensate for the loss of that advantage. But when the death is itself to result in an advantage by way of a distributive share in the decedent's estate, how can that give an insurable interest in the life, the very loss of which is to advantage, and not to cause loss to the beneficiary?

There are two very important points involving gene-

ral principles and having a special bearing upon the question of insurable interest, which may conveniently be considered together in this connection. The 3d and 13th and 14th assignments of error (Record, pp. 48, 49, *orig.* pp. 115, 116) are referred to. The Court charged the jury (Record, p. 28, *orig.* p. 79): "The contract is between the Ætna Ins. Co., of the one part, and Chew of the other, for the assurance of his life. As a contract made by competent parties, founded upon the assured's interest in his own life, it is primarily binding upon both of them." No notice whatever is taken in the charge of the fact which the evidence disclosed (Record, p. 23, *orig.* p. 71) that the three premium notes on this identical policy were made and executed by Mrs. France, and which fact gave full foundation for the defendants' 1st and 2d points as to the insurance having been in reality effected by Mrs. France for her own benefit, though nominally the policy was taken out by Chew on his own life (Record, p. 25, *orig.* p. 76); and the refusal to give the instructions contained in which forms the subject of the 13th and 14th assignments of error. The charge of the judge in this connection is based upon the assumption as an absolute, uncontradicted and unqualified fact that the contract was one exclusively between the Company, defendants, and Andrew J. Chew, the life insured; and yet Mrs. France not only gave the premium notes on the policy; but she herself signed in her own name the application (Record, p. 39, *orig.* p. 97) which is "the basis of the contract." Surely the defendants, when by a point expressly framed to meet this aspect of the case, they requested that the jury should have a definitive instruction in relation to it, were entitled to a categorical

answer to the point; and ought not to have been put off with a passing reference to the generalities of the charge, in which there is not even so much as the shadow of a hint in reference to Mrs. France's position, other than as a mere receptacle for the insurance money.

So when the judge, in continuation of this branch of his charge, proceeds (Record, p. 28, *orig.* p. 79): "But could they [Chew and the Company] stipulate that the money to be paid by the underwriters should be applied to the benefit of the sister of the assured? I do not think such a stipulation is obnoxious to any principle of law or rule of public policy. Chew might lawfully assign a policy upon his own life to his sister, and *the natural relation in which they stood to each other would be a valid consideration for the assignment;* and the obligation of the underwriter would in no wise be impaired by it. Her designation in the body of the policy as the beneficiary has only this effect, and *is alike meritoriously supported by their near relationship.* And it would be manifestly unjust to release from his contract a party who assumed its obligations with a full knowledge of its import and accepted the stipulated consideration for it;" not only was the contract treated as exclusively a matter between Chew and the Company, and the fact of relation and kinship dwelt upon and made prominent; but the assumption is made that the Company knew all the circumstances of the case, when there is no evidence that they had any knowledge whatever on the subject in this respect, beyond the bald and naked fact stated that Mrs. France was Chew's sister.

4. The 5th, 6th, 21st, 25th and 26th assignments of

error (Record, pp. 48–51, *orig.* pp. 115, 118, 119) may be considered together.

These assignments all relate to the effect of the expressions in the application "as near as I can recollect" and "the above is as near correct as I remember." It is important to note precisely how these expressions occur in the application. The 4th question is (Record, p. 38, *orig.* p. 95), "Place and date of birth of the party whose life is to be insured." *Ans.* "Born New Jersey in 1835." Question 5 (Ibid.): "Age next birthday." *Ans.* "Thirty years, October 28, as near as I can recollect." From this it is evident, that the doubt which led to the insertion of the qualifying phrase, was as to the day of the birth; for the answer as to place and date [year] of birth was unqualified and tallies with the age of 30 years. At the foot of the questions and answers is added, "The above is as near correct as I remember." And while it might seem to apply to the whole of the statements, yet it is evident, in view of the absolute and unqualified answers given only three months before to the same questions in the application for the former policy (Record, p. 45, *orig.* pp. 105, 109) that its real purport was in respect to the age.

In any event, the materiality of the statements and answers did not enter into the issue. Certainly if Chew had knowledge or recollection respecting any of the matters inquired of he was bound to state it. The materiality of the questions had been fixed by the parties. In this view of the case, the charge of the Court, that "Without this qualification *substantial* error in any of his answers would avoid the policy," which forms part of the 5th assignment of error (Record, p. 49, *orig.* p. 115); and the charge, "To avoid the policy,

then, the jury must be satisfied that the answers or some of them, were untrue in any respect *materially affecting the risk*, and that the assured knew of their incorrectness," which is the ground of the 6th assignment (Record, p. 49, *orig.* 115); were, it is submitted erroneous, because the jury were naturally led to believe that if in their judgment any of the answers did not *materially affect the risk*, even if the assured did know of their incorrectness, it would not avoid the policy. It was introducing for the consideration of the jury in determining the case, an additional element which it has already been shown had no place there, having been excluded by the parties themselves, and which was calculated to mislead the jury as to the issue they were to try.

It was important, also, in view of the evidence tending to show so great a discrepancy in age as from five to seven years (Record, p. 23, *orig.* p. 71), that the defendants' 14th point, "That the expressions 'as near as I can recollect,' and 'as near correct as I remember,' are not to be taken as giving an entirely indefinite limit to the answers in the application, but must be taken as meaning in respect to age, about the age and date of birth stated" (21st assignment, Record, p. 50, *orig.* p. 118), should have been answered specifically.

And since the Court had introduced, for the consideration of the jury, the question of materiality of a misrepresentation, it was of consequence that the jury should have been specifically directed as requested in defendants' 23d point, that it was not necessary for such misrepresentation to avoid the policy, "that the death should have occurred from a cause connected with the fact misrepresented." (25th assignment, Record, p. 51, *orig.* p. 119).

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The defendants were also entitled to have the attention of the jury called specifically to the effect of the answers in the application for the former policy being "absolute and without any qualification whatever;" and to have had the specific instruction requested in the 24th point, that this fact "might reasonably lead the defendants to presume that the use in the answers to the questions in the second application of the expressions, 'as near as I can recollect,' and 'as near correct as I remember,' did not mean that the applicant had no knowledge on the subjects inquired of, but that he considered the answers nearly correct, without meaning to bind himself to strict accuracy." (26th assignment, Record, p. 51, *orig.* p. 119). Certainly it was the right of the defendants to have this matter bearing upon a discrepancy so great as to render it highly improbable that it could have been from a lack of memory, as distinctively presented to the jury, when requested, as that the various aspects of the evidence in respect to rupture and other diseases, should have been called specifically to their attention, with a decided leaning in favor of the plaintiff. See the charge (Record, pp. 29, 30, *orig.* p. 80).

A specific answer to this question was also important to prevent the jury from giving undue effect to the fact that the application in the present case had been accepted by the defendants, in the form it was made, without objection.

5. The 9th and 10th assignments of error (Record, p. 49, *orig.* p. 116). The learned judge seems to have misapprehended the scope of question No. 11 in the application, because he confines his charge to the inquiry as

to Chew having had consumption, or any "disease of the lungs known as consumption." Now question No. 11 (Record, p. 38, *orig.* p. 95, *ante* pp. 2, 3), did not confine the inquiry as to "disease of the lungs known as consumption," but inquired distinctly as to "spitting of blood, *consumption*, asthma, bronchitis, *diseases of the lungs*;" the two were not combined as they are in the charge—they were not even placed in such juxta-position as to justify any inference that they were meant to be considered as necessarily connected. If Chew had had any disease of the lungs, consumption or otherwise, he was bound to answer in regard to that; and the 18th point of defendants (Record, p. 27, *orig.* p. 77), placed the matter distinctly before the judge's notice, by the request to charge that if Chew "had had consumption, *or* any disease of the lungs, or any of the other diseases mentioned in said question 11, he was bound in answer to said question to state the fact," &c.

Besides, the judge not only assumed as an established fact, that Chew had been actually examined by two physicians of the company, notwithstanding one of the distinct issues and defences in the case rested upon a denial of the identity of the party examined under the present application; but the jury were told (Record, p. 29, *orig.* p. 80), that "In view of the fact that he survived for years after it is alleged that he was so affected, and of the result of his examination by two different physicians of the insurance company, in July and September, 1865, *the jury will probably infer that such disease, if he had it at all, was not so far developed as to be capable of detection.* Even if he had it then, under such circumstances his answer cannot be regarded

as untrue, is a sense that would affect the validity of the policy."

No elaboration is necessary to demonstrate the injurious effect to the defendants of the charge put in such a way.

6. The 22d, 23d and 24th assignments of error (Record, p. 51, *orig.* p. 118), relate to the refusal of the court to answer specifically the 17th, 20th and 21st points of defendants, as to the obligation of Chew to answer questions 11, 13 and 14 (Record, p. 38, *orig.* pp. 95, 96). These questions had reference to Chew's having had any of the diseases specified(11), or any "severe disease" during the preceding seven years(13), or being, *at the time of the application*, "afflicted with any disease or disorder"(14). As to the last question, it was in no sense a matter of remembrance or recollection, for it was an inquiry as to a present existing condition of things, and if the jury believed that at the time inquired of Chew was so afflicted, his memory or recollection could have nothing to do with the question. That the point contained correct statements of the principles of law as directly applicable to the facts of the case cannot be doubted after *Jeffries* v. *The Economical Life Ins. Co.*, 22 Wallace, 47, and *Ætna Life Ins. Co.* v. *France*, 91 U. S. Reps. S. C. (1 Otto) 510. The defendants were therefore entitled to have the propositions distinctly presented to the jury as requested.

7. The 7th and 8th assignments of error (Record, p. 49, *orig.* pp. 115, 116), it is submitted should be sustained, because the question of knowledge of Chew as to the matters inquired of respecting his age, and his having

had consumption or rupture, was put baldly to the jury without qualification or explanation, or caution as to any assertion of want of knowledge being wilful ignorance or gross and inexcusable carelessness in recollection. Under the circumstances of the case, with the very great discrepancy alleged as to age, seven, and at the least five, years from that stated in the policy,—and the positive evidence as to rupture,—and the absolute and unqualified answers in the application of July, only three months before,—and the special request (14th point, 21st assignment, Record, p. 50, *orig.* p. 118), of the defendants to charge that there was nothing in the qualifying expressions "giving an entirely indefinite limit to the answers in the application, but must be taken as meaning in respect to age, about the age and date of birth stated;" it was error in the judge to leave the matter, so far as respected knowledge, to the jury without explanation, caution or limitation.

8. As to the 11th assignment, evidence had been given to show (Record, pp. 23, 24, *orig.* p. 71), that Chew had been ruptured from infancy and so continued up to the time of the application and policy, and up to the time of his death; and that he wore a truss from about at least the year 1846 up to his death; while the bill of exceptions (Record, p. 24, *orig.* p. 74), does not show what specific evidence was given by plaintiffs as to the alleged rupture. Yet the judge in his charge, without alluding to the evidence of Chew having worn a truss for nearly twenty years prior to his death, gives special emphasis to the possibility of the rupture having been reduced, &c. If he set forth the tendency of the evidence on the one side, he was bound to set forth the

tendency of the evidence on the other side, especially when this depended on so plain and tangible a fact as the wearing of a truss.

9. So also the judge should have answered specifically the 13th point of defendants as to the materiality of the discrepancy in age (20th assignment, Record, p. 50, *orig.* p. 118). Much of what has been already presented above is applicable to this error.

10. The points upon which the defendants requested the judge to charge the jury were carefully prepared so that the several questions which they were to determine should be succinctly and definitely presented for their consideration. They were not even read to the jury, but dismissed with expression as to their being "a catechism" (Record, p. 30, *orig.* p. 81), which could not fail to prejudice the jury as to the defendants' case. The points were intended to meet the very common objection which has been set up as an answer so often and in so many cases, to assignments of error really meritorious in substance, that the attention of the judge had not been called to the matter, or that it was not error for a judge to omit to charge what he was not specially requested to. And in a case like the present, when such varying phases of the question upon which depended the liability of the defendants presented themselves, it was of consequence that the specific points should be "categorically answered." They were not covered by the general charge.

11. The 27th assignment of error (Record, p. 51, *orig.* p. 119), which is the last to be considered, was directed

to the failure to charge as requested in the defendants' 25th point, which was based upon a distinct clause in the application (Record, p. 39, *orig.* p. 97), that "any suppression of facts in regard to the party's health should render the policy null and void." This aspect of the case is not alluded to in the general charge in any way.

12. The entire charge seems to rest upon an assumption or very evident leaning on the part of the judge in favor of the plaintiffs, and the jury were charged that they were entitled to recover the whole amount of the policy without any reference to the fact which was given in evidence (Record, p. 24, *orig.* p. 73), that the premium actually paid would, even if the discrepancy in age was to be tolerated or excused on the ground of mistake or want of recollection, entitle the party to but $8089 70 instead of $10,000. But the jury were not left any alternative.

SAMUEL C. PERKINS,
*Of Counsel for Plaintiff in Error.*

IN THE

# Supreme Court of the United States.

*No. 234. October Term, 1876.*

**The ÆTNA LIFE INSURANCE COMPANY, of Hartford, Connecticut,**

*Plaintiff in Error,*

vs.

**DAVID FRANCE and LUCETTA T., his wife, in right of the said LUCETTA, and to her use.**

## *BRIEF OF DEFENDANTS IN ERROR.*

NATHAN H. SHARPLESS,

OF COUNSEL WITH DEFENDANTS IN ERROR.

# In the Supreme Court of the United States.

*No. 234. October Term, 1876.*

The AETNA LIFE INSURANCE COMPANY, of Hartford, Connecticut, Plaintiff in Error and Defendants below,

*vs.*

DAVID FRANCE, and LUCETTA T., his wife, suing in right of said Lucetta T., and to her use.

## BRIEF OF DEFENDANTS IN ERROR.

On the 13th day of September, 1865, Andrew J. Chew, then an unmarried man, residing in the City of Philadelphia, insured his life in that city in the corporation plaintiff in error, for the term of his life, in the sum of $10,000, for the benefit of his married sister, Lucetta T. France. The policy (R., p. 34), states upon its face that it is made in consideration of the sum of $243.50 *paid by him*, and the receipts for the annual premium (R. pp. 35–6–7) all state that they were received from him; he died May 25, 1872; the company's officers took upon themselves the procuring of the preliminary proofs, there was no dispute as to them, other than that the plaintiff, Lucetta, declined any responsibility for their contents; and in the first instance the right of the plaintiff below to a recovery seemed perfect.

The defendants set up three alleged grounds of defence:

1. That the plaintiff, Lucetta, had no insurable interest in her brother's life.

2. That Chew had misstated his age in the application; and

3. That he had also answered falsely as to an alleged rupture, and other diseases with which the defendants asserted he had been afflicted.

With a view of properly arousing the attention of the learned Judge below to the merits of these so-called defences, they presented him with *twenty-five* points for charge, and the plaintiff having obtained a verdict, and *twenty-five* reasons for a new trial having been over-ruled, we have *twenty-seven* assignments of error to be disposed of here. Is it credible that a case so simple as this, did or could have required so varied a statement of the legal principles upon which its solution depends, or that there could have been other object in this on the part of the corporation defendant than the entangling of the administration of justice in a maze of words in which the defendants had nothing to lose, and hope now apparently haply to gain.

There are two exceptions on questions of evidence at the trial, which may be mentioned here.

The first exception, and first assignment of error, is upon the rejection by the Court of a policy of $10,000, dated July 12th, 1865, by the defendants' corporation, similar in form to the one on which suit was brought on the life of Chew, in favor of his sister Lucetta the plaintiff. This was offered by the defendants in connection with the application and medical examination of Chew for that policy; the application and medical examination were admitted, but the policy was rejected as irrelevant. What bearing had the existence or non-existence of this policy upon the question of the liability of the defendants to the plaintiff on the one in suit? The only complaint is that its rejection prevented the jury from knowing that the application had been ac-

cepted, and that there were two policies; the record shows that these facts were otherwise in evidence, and known, or might have been so, to the jury. Both applications were in evidence, and the first one (R. p. 45), shows that it was for a $10,000 policy, and from the second application (R. p. 38), it appears that the first one was accepted.

The second exception, and second assignment of error, is upon allowing a question to be put to plaintiff's expert, Dr. R. J. Levis, as to whether or not in his opinion the existence of a reducible rupture in a subject of life insurance appreciaby increased the risk of the underwriters.

It is surely a sufficient answer to this to say that it does not appear from the Bill of Exceptions (R. p. 25), that the question was answered at all, much less that the answer (if any) injured the defendants; And it does appear from the charge of the learned Judge (R. p. 29), that the jury were expressly told in substance that if Chew had been ruptured, and knew it, the plaintiff could not recover.

As to the alleged defence of a want of insurable interest in the plaintiff, Lucetta.

The policy in this case was one in which the risk insured his own life (R. p. 34). And the declaration, second count (R. pp. 8 and 9), on which there is a verdict and judgment, avers that he insured himself, and that he paid the premiums. And as to this count, which was not demurred to, nor was a motion made to arrest the judgment thereon, the interest of the plaintiff, Lucetta, was immaterial.

"A person has, undoubtedly, an insurable interest in his own life, and that interest supports a policy, whether he makes the loss payable to himself, his executors, or his assigns, or to a nominee or appointee named in the policy." Bliss on Life Insurance, pp. 34-35, citing many American cases.

But any sister has an insurable interest in the life of her brother, and the learned Judge below was even more cautious on this point, than he need have been. In Campbell *vs.* The New England Mutual Life Insurance Company, 98th Massa-

chusetts Report, p. 381, it is directly ruled that an insurance made by a man on his own life for the benefit of his sister-in-law, was valid, without proof of other insurable interest in the beneficiary, and to the same point is the ruling in Lord *vs.* Dall, 12th Massachusetts, p. 115, cited in support of the same rule laid down in Bliss on Life Insurance, p. 63.

So that in any event upon the second count in her declaration, the plaintiff was entitled to a verdict, and the instructions of the learned Judge, whether right or wrong, upon the issue tendered on that count, were immaterial. The allegation of the defendants, that a policy in the name of the assured, cannot be made the cover for a mere wager, is nothing to the purpose; the contract was regular upon its face and upon the pleadings, and the bill of exceptions shows no evidence which would have warranted the Judge in submitting the question of its being a mere wager to the jury. The only evidence the defendants allege they have upon the point, is the fact that in 1869 (four years after the policy was made), and subsequently the plaintiff Lucetta, gave her promissory notes (R. p. 47) for the note part of the yearly premium. Passing by the question whether the company are not estopped from referring to this by their receipts to Chew himself for the annual premiums, at the utmost it can only be relied upon as possible evidence that after 1869, Chew being unable himself to pay the premiums, his sister paid them herself, to keep alive the policy with which he had presented her, but that this would have warranted the Judge in submitting the question to the jury, as to whether or not this was *originally* a gambling contract, seems unreasonable, and certainly no authority is cited in support of the position.

As to the alleged misstatements of Chew as to his age and the diseases to which he had been subject.

It appears from the application (R. pp. 38 and 9) that Chew refused to state his age positively therein, and that his answer to *all* the questions were qualified by an addition at the foot of the words, "The above is as near correct as I remember." We have heard a great deal from the defendants as to the necessity

of a literal compliance with the terms of the warranties irrespective of all question of their materiality, &c., but the converse of their proposition, to wit: that as such warranties tend to work forfeitures they are to be *strictly construed* is also firmly established by law. Bliss on Life Insurance, p. 62.

There is no evidence in the case as to whether Chew had a good or bad memory or as to what his means of knowledge were of that whereof he undertook to speak. He may have been wholly imbecile and visibly so to the company's physicians when they examined him. But whatever he was or was not *there cannot be the slightest valid pretence for the assertion that under the application in evidence there was a warranty of anything on his part, but that the answers were as near correct as he could at the moment remember.*

The fatal defect running through all the defendants' points for charge on this subject of rupture and other diseases is that they seem to have entirely ignored the question of Chew's previous knowledge and recollection at the time, and to have insisted upon the alleged warranties as absolute. When the policy was issued and the Company took the premium, this matter was immediately before their officers, Chew had refused to be bound as to other than the best of his recollection; they do not appear to have at all concerned themselves then as to the extent of his information or the accuracy of his memory, and their present anxiety in these questions after having received some $1,700 in premiums on this policy is very ill timed.

It is not necessary to vindicate the charge of the learned Judge in this case; its simplicity and strength answer for it; the jury were told in substance, taking the charge as a whole, that if Chew had been ruptured, or had had consumption, or that if any of his Answers were untrue, the defendants were entitled to a verdict. The defendants could ask no more than this, and it is confidently submitted, that if they had received their just deserts, they would have got considerably less.

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